



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
-----) ISCR Case No. 07-06214
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: D. Michael Lyles, Esquire, Department Counsel
For Applicant: Mary Scott Hunter, Esquire

February 21, 2008

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to deny or revoke her eligibility for an industrial 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 October 10, 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 based on a history of financial problems as evidenced by delinquent debts.

In addition, 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

¹ Executive Order 10865, *Safeguarding Classified Information within Industry*, dated February 20, 1960, as amended, and DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive).

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 30, 2007, and requested a hearing. The hearing took place as scheduled on January 29, 2008, and the transcript (Tr.) was received on February 6, 2008.

The record was left open until February 15, 2008, 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) Exhibit C—cover letter; (2) Exhibit D—payment history for the repayment plan; and (3) Exhibit E—college transcript. For the reasons discussed below, this case is decided for Applicant.

Procedural Rulings

The SOR was amended, without objections, to reflect Applicant's name change per her divorce (Exhibit B—IV, V).

The government moved to withdraw the allegations in SOR ¶¶ 1.s and 1.t, and the motion was granted (Tr. 85–86).

Findings of Fact

Under Guideline F, the SOR alleges 18 delinquent debts ranging from \$43 to \$20,198 for about \$36,000 in total (excluding SOR ¶¶ 1.s and 1.t). A large part of the indebtedness is due to medical bills (SOR ¶¶ 1.g–1.n). In her response to the SOR, Applicant admitted the factual allegations and provided explanations about her efforts to address the debts. Based on the record evidence as a whole, the following facts are established by substantial evidence.

Applicant is a 31-year-old employee of a privately-held research and technology company. She works in the field of geometric dimensioning and tolerancing in support of a missile-defense program. She has worked for her current employer since February 2005. She held an interim security clearance, without incident, from about April 2005 until the SOR was issued. She is seeking to obtain a security clearance from the Defense Department the first time.

Applicant's financial problems, which she does not dispute, stem from a difficult marriage that eventually ended when she divorced her husband. She married her then 34-year-old husband in 1995 when she was 19 years old, and the couple resided in her

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).

husband's hometown. Applicant had moved there a few years earlier. The marriage produced four sons, now ages 11, 9, 7, and 5. The three oldest sons attend public school.

Within 18 months of her marriage, Applicant learned that her husband was not financially responsible. He was the sole breadwinner and viewed his earnings as his money, which he spent as he saw fit. This often resulted in a lack of money for basic necessities. This was a source of disagreement and contention between Applicant and her husband. The financial problems became so troublesome that in 1998 the couple sought relief via a Chapter 7 bankruptcy (Exhibit 3 at 3-4). The bankruptcy court granted a discharge of about \$100,000 of indebtedness. The bankruptcy petition was joint, although Applicant explained that she felt she had little choice but to go along with it.

Applicant explained that they moved frequently because her husband failed to pay rent, and she endured other hardships (Tr. 42-44). On one occasion, she was forced to heat water on a gas grill for bathing her sons because there was no gas to heat water in the house. On another occasion, she ran an extension cord to a neighbor's house to obtain electricity to run a fan in the summer. When she was pregnant with her fourth child she went without eating for four days so that her three sons had enough to eat. Her husband used her good credit by accepting credit card offers in her name and then running up debt on the accounts (Tr. 44). In sum, Applicant described her marriage as follows:

I was in a nightmare. And it quickly became a game of survival. Because once the arguments about finances elevated to the point that he became physically abusive, and I knew the only way that I could provide the lifestyle for my family was if I finished school. And though it was extremely difficult, I knew it was something I absolutely must do (Tr. 38).

In November 2001, Applicant called the police and reported her husband for spouse abuse (Exhibit B-III). He was charged with the misdemeanor offense of 4th degree aggravated assault/spouse abuse. Shortly thereafter, on December 1, 2001, he was charged with contempt of court for violating a protective order stemming from the initial charge. Both charges were disposed of in January 2002 via a guilty finding and a sentence that included 60 days in jail (suspended).

A large part of Applicant's indebtedness is due to medical bills (SOR ¶¶ 1.g-1.n) Although available through his job as a driver, her husband declined to enroll in his employer's health-insurance plan (Tr. 46-47). Without health insurance, the expenses associated with the births of her four sons were covered by a state government program, which included care for the mother for six weeks after child birth. More than six weeks after the birth of her fourth son, Applicant developed medical problems associated with child birth resulting in a 26-day hospital stay. The medical bills in the SOR stem from this incident.

Applicant attended a state university as a part-time student from June 1994 until her graduation in December 2004, when she was awarded a bachelor of science degree with a major in engineering graphics and design (Exhibits 1 and E). She then decided it was time to obtain a divorce because she would now be able to provide for her sons. She consulted a local lawyer who recommended waiting until she relocated to another state for her employment. She moved with her sons to her current state of residence in February 2005. The divorce case commenced in October 2005, and her husband did not respond to the complaint. In December 2005, the state court found her husband in default and granted Applicant a divorce (Exhibit B–IV). She was awarded physical and legal custody of her sons and he was granted visitation rights. The court also ordered her husband to pay child support of \$1,348 per month. He is paying child support at the rate of about \$1,200 per month. Applicant has not sought to force him to pay the court-ordered amount and has elected to take what she can get at this point. The divorce decree did not assign debts to either party.

Applicant addressed the debts alleged in the SOR during her testimony (Tr. 70–85). The status of accounts is summarized in the following table.

<i>Debt Description</i>	<i>Current Status</i>
SOR ¶ 1.a–collection account for \$5,316.	In repayment program (Exhibit A, Tab A).
SOR ¶ 1.b–collection account for \$487.	Paid (Exhibit A, Tab B).
SOR ¶ 1.c–collection account for \$2,215.	Collection lawsuit dismissed because ex-husband paid account (Exhibit A, Tab C; Tr. 75-77).
SOR ¶ 1.d–charged-off account for \$790.	In repayment program (Exhibit A, Tab D).
SOR ¶ 1.e–collection account for \$301.	Paid (Exhibit A, Tab E).
SOR ¶ 1.f–collection account for \$324.	Account in ex-husband’s name; unable to obtain information (Exhibit A, Tab F; Tr. 79–80).
SOR ¶¶ 1.g–1.n–medical collection accounts with same creditor for \$24,779.	In repayment program (Exhibit A, Tab G–N; Tr. 80–83).
SOR ¶ 1.o–collection account for \$43.	Paid (Exhibit A, Tab O).
SOR ¶¶ 1.p–1.q–collection accounts for \$1,091 and \$515 with same creditor.	In repayment program (Exhibit A, Tab P–Q).
SOR ¶ 1.r–collection account for \$199.	Creditor researching account to see what is owed, if anything (Exhibit A, Tab R).

In about June 2007, Applicant engaged a company to serve as a debt-management agent for four creditors (Exhibit A, Enclosure 4; Exhibit B–VI, VII). It is a

48-month repayment program with the specific purpose of settling debts. She has made the required monthly payments since June 2007 (Exhibits C and D). The program has an estimated completion date of June 2011. She hopes to complete it sooner by making extra payments.

Applicant's current financial condition is much improved. Her gross annual salary is about \$59,000. Including child support at \$1,200 monthly, her total annual income is about \$73,000. She describes her family's lifestyle as living by necessities. In about December 2006, Applicant's mother moved in with her to help with the children, thereby reducing Applicant's childcare costs, which was a major expense (Tr. 65–66). As a result, her monthly budget now shows a positive cash flow of about \$570 (Exhibit B–X). This includes payments for the repayment program as well as student loan payments, which are current (Exhibit B–VIII, IX). She participates in her employer's 401(k) retirement savings plan by contributing an amount sufficient to obtain the full benefit of her employer's matching contribution (Tr. 100–101). In addition to money in a checking account, she has about \$1,000 in a savings account for unexpected expenses; she has also established savings accounts for her four sons (Exhibit B–X). She recently tapped into her savings account to pay for a \$700 auto repair rather than incurring more debt. She has a credit card that her father established as a joint account between them. She uses it for business travel.

Applicant loves her job, and she takes satisfaction knowing that her work supports the Defense Department and the war fighter (Tr. 87–88). She is interested in furthering her education by pursuing a master's degree and perhaps a doctorate. But her more immediate goal is to normalize her family's life, and getting her finances under control is a major part of that process (Tr. 103–104).

Applicant presented a wealth of favorable character witnesses. Three witnesses appeared and 18 individuals submitted letters of recommendation (Exhibit B–I). Uniformly, these people, many retired military officers and employees in the defense industry, endorse Applicant's application for a security clearance. A few of their comments are as follows:

- A dedicated, trustworthy, and moral person.
- A person of high integrity.
- A critical asset to the mission.
- An outstanding work ethic.
- Dedicated to her family and her job.

Two of the witnesses are particularly noteworthy. The first is the department chair from the university she attended. He recruited her for his program and served as her academic advisor. He has worked 30 years in academia and describes Applicant as a role model for other students. To that end, he invited Applicant to serve on an industrial advisory committee for his department. The second is the president and minority owner of the company. He describes her as a fantastic employee (Tr. 129). He also served as the company facility security officer when Applicant was hired and indicated he would

not have processed her security-clearance application if he thought she was an unacceptable security risk. He would love to have more employees like her. He noted that the company paid Applicant's attorney fees for this proceeding so she would not incur additional debt. The company is considering assisting her with debt repayment, but held off doing so to avoid creating a financial windfall that Applicant would have to explain for this proceeding.

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 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

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.

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.

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.

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. 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, which raise a security concern.

¹² ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

¹³ Executive Order 10865, § 7.

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."

Guideline F contains six conditions that could mitigate the security concerns.¹⁸ The record evidence is sufficient to conclude that five of the six mitigating conditions apply in Applicant's favor as follows:

- 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;
- 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;
- 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;
- the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- 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.

Each MC is discussed below.

The first MC applies because Applicant incurred this indebtedness during a bad marriage with a spouse who was financially irresponsible. Those circumstances are unlikely to recur because Applicant obtained a divorce in 2005 and she is now in charge of her family's finances. Because she resolved the source of her financial problems, and she has a plan to pay her debts, her financial problems do not cast doubt on her current reliability, trustworthiness, or good judgment.

The second MC applies because Applicant incurred this indebtedness under circumstances largely beyond her control. It appears she was in a bad marriage with a spouse who was financially irresponsible and abusive to her. She elected to remain in the marriage to complete her education. Having done so, she left her husband, started her new job, and obtained a divorce. She is now in the process of cleaning up debts from the marriage. Given the circumstances of this particular case, she has acted responsibly.

The third MC applies because there are clear indications that Applicant's financial problems are being resolved or are under control. As established by the table above,

¹⁸ Revised Guidelines at p. 14.

Applicant has addressed the debts at issue in the SOR by various ways. She is not incurring new delinquent debt and is living within her means.

The fourth MC is most pertinent here, as it requires a person to initiate a good-faith effort to repay overdue creditors or otherwise resolve debts. She has made substantial efforts to resolve the delinquent debts as established by the table above. The repayment program is addressing a large part of the indebtedness and she has made the required payments since beginning the program in June 2007. She is earning a good salary, and along with the child-support payments and the reduction in childcare expenses, has sufficient income to pay her normal living expenses and her debts. Her efforts are sufficient to constitute a good-faith effort within the meaning of the guideline.

The fifth MC applies because Applicant has disputed three of the debts alleged in the SOR. The first is SOR ¶ 1.c, a collection account for \$2,215. She disputed the legitimacy of this debt by showing that her ex-husband paid the account resulting in dismissal of a collection lawsuit (Exhibit A, Tab C). The second is SOR ¶ 1.f, a collection account for \$324. She presented evidence that this account is in her husband's name and he is taking care of it. She documented her efforts to dispute the debt to the extent that she was able to do so (Exhibit A, Tab F). The third is SOR ¶ 1.r, a collection account for \$199. She presented documentary evidence that she may owe nothing as it is currently being researched by the creditor (Exhibit A, Tab R).

This case has also been considered under the whole-person concept. Applicant is 31 years old and sufficiently mature to make prudent decisions about her finances. She has demonstrated her maturity and good judgment by taking positive, concrete actions to address the financial problems caused by her troubled marriage. Unlike many applicants in financial cases, Applicant has (1) a realistic and workable plan to resolve her financial problems, (2) documented actions taken in furtherance of the plan, and (3) shown a measurable improvement to the situation. Her documentary evidence shows that she is working hard to resolve her past indebtedness.

Applicant met the challenge of a bad marriage and delinquent debts by persevering under difficult circumstances. She was a full-time mom and a part-time student while coping with a husband who was abusive and financially irresponsible. After earning her college degree, she left her husband and obtained a divorce. Due to her talents, skills, and hard work, she is now a working professional with a bright future, for her and her sons. She epitomizes the notion of doing the best you can with what you have. These circumstances are indicative of the character traits of determination, integrity, and good judgment, which are certainly relevant in this proceeding.

To conclude, I have considered the record evidence as a whole, both favorable and unfavorable, and I have no doubts or concerns about Applicant's suitability for a security clearance. Applicant presented sufficient evidence to explain, extenuate, or mitigate the financial considerations security concern. Applicant met her 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
Subparagraphs 1.a–1.r	For Applicant
Subparagraphs 1.s–1.t	Withdrawn

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