



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



In the matter of:)
)
-----) ISCR Case No. 07-07009
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: *Pro Se*

January 17, 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 July 26, 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 and Guideline E for personal conduct based on falsification of a security-clearance application.

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

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).

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 August 23, 2007, and requested a hearing. The case was initially assigned to another administrative judge and then reassigned to me on October 24, 2007. The hearing took place as scheduled on November 14, 2007, and the transcript (Tr.) was received on November 26, 2007.

The record was left open until December 14, 2007, to allow Applicant an opportunity to submit documentary evidence in addition to Applicant's Exhibits A, B, and C. In particular, Applicant was invited to submit the following: (1) a recent credit report as she referred to in her testimony; (2) proof of payment for the judgments in SOR ¶¶ 1.b and 1.c; (3) a letter from a medical doctor or other information documenting her husband's diagnosis of and death from Pick's disease; and (4) any other information she thought was relevant to her financial situation (Tr. 98–102). No such matters were received and the record closed on December 14, 2007. For the reasons discussed below, this case is decided against Applicant.

Procedural Rulings

At the hearing, the SOR was amended to conform to the evidence. In particular, SOR ¶ 1.i was amended to show that Applicant is indebted to the IRS, not a county register of deeds, pursuant to a federal tax lien filed in 2002 for the amount of \$8,982 (Tr. 28–30). Based on this amendment, Applicant changed her response to ¶ 1.i from a denial to an admission (Tr. 31–33). Also, Applicant changed her response to ¶ 1.ff from a denial to an admission (Tr. 58–59).

In addition, government counsel conceded that the debts in ¶¶ 1.g and 1.h are the same (Tr. 51–52). And government counsel conceded that the debts in ¶¶ 1.e and 1.ff are the same (Tr. 57–59). These debts will be treated accordingly.

Findings of Fact

Under Guideline F, the SOR alleges multiple delinquent debts (¶ 1.a – ¶ 1.ii) ranging from \$20 to \$8,982 for about \$50,000 in total. Her response is mixed, admitting many and denying several of the debts. Also, she denies the allegations that she made deliberately false statements when answering three questions about her financial record on a security-clearance application. Based on the record evidence as a whole, the following facts are established by substantial evidence.

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 is a 52-year-old instructional systems designer. She has worked for her current employer since November 2005 after relocating to her current state of residence after the premature death of her husband. Her current annual salary is about \$68,000. Before her current job, Applicant worked in the field of education at the college or university level for many years. Her educational background includes a master's degree in education. She is seeking to obtain a security clearance from the Defense Department for the first time.

Applicant married her husband in 1981. Their marriage produced two children. Her 22-year-old son is now a college student and she provides him nominal financial support as he is on scholarship. Her 15-year-old son lives with her and attends public school. Her husband worked as a carpenter, and he was also primarily responsible for managing the family's finances.

Applicant has a history of financial problems as evidenced by multiple delinquent debts, five judgments, and a federal tax lien. As alleged in the SOR, these matters are established by credit reports and other documentary evidence (Exhibits 2, 5, 6, 8). Applicant maintains that she paid the two largest judgments as alleged in ¶¶ 1.b and 1.c, but she did not produce documentary evidence to confirm her representations. The most recent credit report from October 2007 shows these two judgments are unpaid (Exhibit 8). Applicant agrees the other debts are unpaid. She has consulted with two attorneys, both of whom recommended that she pursue a case in bankruptcy, but she elected not to because bankruptcy is against her ethics and she wants to pay her debts. On October 1, 2007, she sent letters to the three major credit reporting agencies in an effort to dispute multiple accounts (Exhibits A, B, and C). The results of her letters are unknown. At the hearing, Applicant acknowledged that she did not really have a plan to resolve the debts other than her intent was to start with the IRS (Tr. 77-78). She believes the federal tax lien is the result of not filing a return for 2001 (Tr. 53). Likewise, she estimates that she likely owes taxes for 2002 and 2003 (Tr. 54). She has not filed returns for these three years and is talking with a tax attorney about doing so (Tr. 53-54).

Applicant attributes her financial problems to her husband's illness and premature death (Exhibit 3 at 5). He was diagnosed in about 2000 with Pick's disease, which is a rare neurodegenerative disease that causes progressive destruction of nerve cells in the brain. He passed away in November 2003 or October 2004, as there is conflicting information in the record (Exhibit 3 at 5 and Exhibit 1 at 20).

Before his diagnosis, he was often ill and behaved oddly. He was treated for many things, from depression to the flu. After his diagnosis, he was unable to work, lost his ability to speak, his motor skills declined, and he regressed until his death. He had always managed the family's finances, including the filing of income tax returns. Applicant believes her husband's illness caused him to forget many things and sometime hide things from her as well. She assumed responsibility for financial matters in about 2000, but she did not really pay attention to the bills due to being preoccupied with her husband's situation. As a result, for example, they had to sell their home in

2001 and then rented it back from the buyer. The judgments in ¶¶ 1.b and 1.c are for unpaid rent. Describing another example, Applicant explained that \$30,000 and three classic cars her husband collected disappeared during this time and she did not know what exactly happened to the money and the cars (Tr. 86–87).

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

- Question 27c—asking if in the last seven years she had a lien placed against her for failing to pay taxes or other debts, to which she replied “yes” and disclosed the federal tax lien filed in 2002.
- Question 27d—asking if in the last seven years she had any judgments against her that had not been paid, to which she replied “no” and did not disclose the five judgments alleged in the SOR.
- Question 28a—asking if in the last seven years she had been over 180-days delinquent on any debts, to which she replied “yes” and disclosed the debt alleged in SOR ¶ 1.e, but no others.
- Question 28b—asking if she was currently over 90-days delinquent on any debts, to which she replied “no” and did not disclose any debts.

In testimony, she explained that she did not realize she had judgments against her (Tr. 66). Likewise, she did not list the other debts in response to Questions 28a and 28b because she did not know about them at the time (Tr. 70).

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 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.

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

Personal conduct under Guideline E¹⁴ 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.”¹⁵

The SOR alleges that Applicant made false statements when providing answers to three questions about her financial record when she completed a security-clearance application. Applicant contends her answers were not deliberately false. Applicant’s explanations, as set forth in the findings of fact, are credible. It’s plain that she had neither a firm grasp nor a full understanding of her financial situation. In addition, Applicant did disclose some adverse financial information in response to two questions. Her disclosures tend to undermine or undercut the case that she was trying to hide her adverse financial history when she completed the security-clearance application. Accordingly, Guideline E is decided for Applicant.

Under Guideline F for financial considerations,¹⁶ 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.”¹⁷ 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 debts¹⁸ and a history of not meeting financial obligations¹⁹ 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

¹⁴ Revised Guidelines at pp. 10–12 (setting forth the disqualifying and mitigating conditions).

¹⁵ Revised Guidelines at p. 10.

¹⁶ Revised Guidelines at pp. 13–14 (setting forth the disqualifying and mitigating conditions).

¹⁷ Revised Guidelines at p. 13.

¹⁸ DC 1 is “inability or unwillingness to satisfy debts.”

¹⁹ DC 3 is “a history of not meeting financial obligations.”

conclusion of financial irresponsibility because Applicant largely ignored her finances during her husband's illness and after his death until confronted during the security clearance process. Also established during the hearing was the failure to file federal income tax returns for 2001–2003. This evidence raises a third disqualifying condition that must be considered.²⁰

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. Obviously, and understandably, the prolonged illness and death of Applicant's husband was a major factor that led to the financial problems. His inability to work reduced the family's income. And his illness preoccupied Applicant. The MC does not apply, however, because Applicant did not act reasonably under the circumstances. Although it is to be expected that she would be preoccupied, she nonetheless had an obligation to manage the finances to the best of her ability. Some slippage could be expected and tolerated under the circumstances, but she essentially ignored the situation while it was occurring and after her husband's death. This continued until 2006 or 2007 when she was confronted during the security-clearance process.

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. Applicant has taken some positive steps to resolve the delinquent indebtedness by attempting to dispute the information in her credit reports (Exhibits A, B, and C). The results of her efforts are unknown at this point. Also, she maintains she paid the judgments for the back rent, but she has not documented her claims. These efforts, in light of the remaining unaddressed financial problems—including the federal tax issue—do not amount to a good-faith effort within the meaning of the guideline.

Applicant is 52 years old and sufficiently mature to make prudent decisions about her finances. Although her intent to resolve her financial problems appears to be genuine, she has done little so far to demonstrate her intent. What is missing here is (1) a realistic and workable plan to clean up her 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 Applicant is facing a mountain of financial problems, starting with the IRS. And more important, her inability or unwillingness to address her financial problems until being confronted during the security clearance process indicates a lack of good judgment that is necessary to obtain access to classified information. Accordingly, Guideline F is decided against Applicant.

To conclude, Applicant did not present sufficient evidence to explain, extenuate, or mitigate the financial considerations security concern. Applicant did not meet her ultimate burden of persuasion to obtain a favorable clearance decision. In reaching this

²⁰ DC 7 is "failure to file annual federal, state, or local income tax returns as required or the fraudulent filing of the same."

conclusion, the whole-person concept was given due consideration and that analysis does not support a favorable decision.

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–1.ii:	Against Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraphs 2.a–2.c:	For 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