



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



In the matter of:)
)
-----) ISCR Case No. 07-08951
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: *Pro Se*

June 23, 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 January 28, 2008. 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. For the reasons discussed below, this case is decided for Applicant.

In addition to the Executive Order and 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

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).

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's Answer was received on February 25, 2008, and she requested a hearing. The case was assigned to me on April 10, 2008. The hearing took place as scheduled on May 15, 2008. The transcript (Tr.) was received on May 27, 2008.

Findings of Fact

Under Guideline F, the SOR alleges a history of financial problems consisting of multiple unpaid delinquent debts (credit card accounts, phone bills, medical bills, and other consumer accounts) ranging from a low of \$23 to a high of \$4,310 for a total of about \$16,000.³ Her Answer was mixed, but in essence she admits the debts, but disputes the status as will be discussed below. Also, she provided an explanation for each debt. Based on the record evidence as a whole, the following facts are established by substantial evidence.

Applicant is a 34-year-old employee of a federal contractor. She has worked for this company as a computer technician since April 2006. She is seeking to obtain an industrial security clearance for the first time.

Applicant married in 1994, divorced in 2000, and married her current husband in 2004. She has two children, a daughter who is now 16 years old and a son who is now 14 years old. Applicant has received \$200 per month in child support since the divorce was final in 2000.

Applicant has lived in the same community since about 1997. While separated from her first husband, she decided to return to college to further her education to support her children. She had previously attended a community college and earned an associate's degree in office administration. From August 1999 to May 2003, she attended a local state university and earned a bachelor's degree in business administration. In addition to her studies, she worked as a customer service associate at a large retail store from July 1999 to November 2004. She worked her way up to the position of head cashier and the responsibilities that went with it. Applicant lived on limited financial resources while attending school and working at the retail store. This circumstance resulted in Applicant moving into public housing, and she also used credit cards to finance living expenses.

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 The SOR has ¶¶ 1.a–1.bb, but mistakenly omits ¶ 1.s.

After she earned her bachelor's degree, she was unable to obtain an job in her chosen field of information technology (IT) due to lack of experience. So, in September 2004 she took a job as a teacher's assistant at a local school. She earned about the same as working at the retail store, but the job came with benefits. She worked at the school until July 2005 when she secured an IT position as a computer lab technician in the same school system. She worked there until she started her current employment as a computer technician in April 2006.

In general, Applicant has a history of financial problems, which she does not dispute (Exhibits 2, 3, and 4). She described her actions to resolve the debts in her Answer and hearing testimony (Tr. 29–49). The debts and her supporting evidence are summarized in the following table.

<i>Debts</i>	<i>Status</i>
SOR ¶ 1.a—\$495 charged-off account.	Paid in Nov. 2007 (Exhibit A-1).
SOR ¶ 1.b—\$2,409 charged-off account.	In a repayment since Nov. 2007 (Exhibit A-2).
SOR ¶ 1.c—\$569 collection account.	Settled in Oct. 2007 (Exhibit A-3).
SOR ¶ 1.d—\$257 collection account.	Paid in Oct.–Nov. 2007 (Exhibit A-4).
SOR ¶ 1.e—\$102 collection account.	Paid in Nov. 2007 (Exhibit A-5).
SOR ¶ 1.f—\$2,899 medical collection account.	Unpaid; intends to pay (Tr. 32).
SOR ¶ 1.g—\$116 medical collection account.	Unpaid; intends to pay (Tr. 32).
SOR ¶ 1.h—\$312 medical collection account.	In repayment since Oct. 2007; balance is now \$182 (Exhibits A-6 and B).
SOR ¶ 1.i—\$31 medical collection account.	Paid in Nov. 2007 (Exhibit A-7).
SOR ¶ 1.j—\$29 medical collection account.	Paid in Nov. 2007 (Exhibit A-8).
SOR ¶ 1.k—\$26 medical collection account.	Paid in Nov. 2007 (Exhibit A-8).
SOR ¶ 1.l—\$608 collection account.	In repayment; balance is now \$368 (Exhibits A-6 and B).
SOR ¶ 1.m—\$51 medical collection account.	Paid (Exhibit A-9).

SOR ¶ 1.n—\$404 medical collection account.	Paid (Exhibit A-9).
SOR ¶ 1.o—\$27 collection account.	Paid in Apr. 2004 (Exhibit A-10).
SOR ¶ 1.p—\$360 collection account.	Paid in 2003 (Tr. 39–40).
SOR ¶ 1.q—\$69 collection account.	Resolved (Tr. 40–41).
SOR ¶ 1.r—\$23 medical collection account.	Paid in Feb. 2008 (Exhibit A-6).
SOR ¶ 1.t—\$250 collection account.	Paid in Apr. 2008 (Exhibits A-11 and C).
SOR ¶ 1.u—\$107 collection account.	Paid in Nov. 2007 (Exhibit A-12).
SOR ¶ 1.v—\$887 collection account.	Resolved (Tr. 44-45).
SOR ¶ 1.w—\$51 medical collection account.	Same account as in ¶ 1.m.
SOR ¶ 1.x—\$404 medical collection account.	Same account as in ¶ 1.n.
SOR ¶ 1.y—\$780 collection account.	Resolved (Tr. 46).
SOR ¶ 1.z—\$250 collection account.	Same account as in ¶ 1.t.
SOR ¶ 1.aa—\$107 medical collection account.	Same account as in ¶ 1.u.
SOR ¶ 1.bb—\$4,310 collection account.	Settled in Oct. 2007 (Exhibits A-13 and D).

To sum up, Applicant is now repaying three accounts, and she has paid, settled, or resolved the other debts at issue except for the two medical collection accounts in ¶¶ 1.f and 1.g. Her plan is to address these two accounts when she completes the current repayment agreements (Tr. 56–57). Government counsel conceded that the four accounts described as duplicates are in fact duplications (Tr. 71).

Her gross income for 2007 was approximately \$30,000 (Tr. 65). She and her husband manage their money via a single joint checking account, and her husband has assumed primary responsibility for bill paying and is helping her pay bills on time and clean up her credit record (Tr. 66). Monthly rent and car payments are current as are state and federal taxes (Tr. 67–69).

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

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.

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 (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. Her 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 multiple delinquent accounts described above are more than sufficient to establish these two disqualifying conditions. Likewise, the same facts and circumstances support a conclusion of financial irresponsibility.

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

¹⁴ Executive Order 10865, § 7.

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

¹⁶ Revised Guidelines at 13.

¹⁷ DC 1 is "inability or unwillingness to satisfy debts."

¹⁸ DC 3 is "a history of not meeting financial obligations."

The guideline provides that certain conditions¹⁹ may mitigate security concerns. The six mitigating conditions are as follows:

MC 1—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;

MC 2—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;

MC 3—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;

MC 4—the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

MC 5—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; and,

MC 6—the affluence resulted from a legal source of income.

The most pertinent MC to this case is MC 4—good-faith effort to repay—and it applies in Applicant's favor. She presented substantial evidence (both documentary evidence and credible testimony) to demonstrate an intent to clean up her financial house. As summarized in the table above: (1) she paid, settled, or resolved 18 debts; (2) she is now repaying 3 debts; (3) she will address the 2 unpaid accounts when the others are paid; and (4) 4 accounts are duplicates. Her actions show a documented, measurable improvement to her overall financial condition. Also, it shows that Applicant is both determined and serious. Based on the evidence, it is likely she will pay off the outstanding debts in the near future. And it is important to note that Applicant took action on many of the accounts before the SOR was issued in January 2008, which further supports a conclusion of good-faith effort.

To sum up under the whole-person concept, Applicant struggled financially after her divorce while raising two children. To her credit, she worked hard, went back to school and improved her job skills, and it appears she is now on a path toward career success. She remarried a few years ago and her husband appears to be a stabilizing

¹⁹ Revised Guidelines at 14.

factor in her life. Although she did not present a perfect case in mitigation by paying off all the debts, she did present an adequate case in mitigation.

To conclude, Applicant presented sufficient evidence to rebut, explain, extenuate, or mitigate the security concerns. Applicant met her ultimate burden of persuasion to obtain a favorable clearance decision. This case is decided for 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:	For Applicant
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Subparagraphs 1.a–1.bb:	For Applicant
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Conclusion

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

Michael H. Leonard
Administrative Judge