



ISCR Case No. 07-09191

adjudications and other determinations where an SOR has been issued on September 1, 2006, or thereafter.<sup>2</sup> 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 31, 2007, and requested a hearing. The hearing took place as scheduled on January 30, 2008, and the transcript (Tr.) was received on February 7, 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 five-page post-hearing exhibit is marked and admitted as Exhibit E. For the reasons discussed below, this case is decided for Applicant.

### **Findings of Fact**

Under Guideline F, the SOR alleges 11 delinquent debts ranging from \$45 to \$7,175 for about \$18,585. In his response to the SOR, Applicant admitted the factual allegations except for the debts in SOR ¶¶ 1.a and 1.c, which he denied. Also, he provided a short explanation about the origin of his financial problems and his remedial actions. Based on the record evidence as a whole, the following facts are established by substantial evidence.

Applicant is a 49-year-old systems analyst for a company engaged in defense contracting. He has worked for his current employer since October 2005. He worked in the same position for a different company from April 2004 to October 2005. In addition, his employment history includes approximately 20 years of active duty military service in the U.S. Navy until his retirement in 2004. When he retired, he was serving as chief petty officer (paygrade E-7). He held a security clearance, without problems, for many years in the Navy.

Applicant has a history of financial problems, which he does not dispute (Exhibits 2 and 3). For example, an April 2006 credit report reveals a judgment for \$1,934, 30 trade accounts of which 14 contain adverse information (past due, bad debt, etc.), and 7 collection accounts (Exhibit 3).

He attributes the origin of his financial problems to the 1999–2001 period when he was on active duty in the Navy (Response to SOR). In August 1999, he received transfer orders to a large naval base and then deployed overseas shortly thereafter. These circumstances resulted in Applicant being unable to move his family to his new duty location for about 18 months due to his deployment schedule. During this time he

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<sup>2</sup> 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).

incurred additional expenses and lost control of his finances. In time, his financial problems grew worse due to the effect of snowballing.

Applicant addressed the 11 debts alleged in the SOR during his hearing testimony. The status of the accounts is summarized in the following table.

<b><i>Debt Description</i></b>	<b><i>Current Status</i></b>
SOR ¶ 1.a—collection account for \$7,175.	In repayment program; current balance of \$4,013 (Exhibits A and E).
SOR ¶ 1.b—charged-off account for \$2,880.	In repayment program (Exhibit A).
SOR ¶ 1.c—collection account for \$1,223.	Reduced to judgment for \$1,934 in 2004; paid off in 2006 (Exhibits 1 and E at 1; Tr. 75–78).
SOR ¶ 1.d—collection account for \$2,928.	In repayment program (Exhibit A).
SOR ¶¶ 1.e, 1.f, 1.g, 1.h, 1.i, and 1.k—collection accounts for \$109, \$199, \$136, \$89, \$93, and \$45 for total of \$671.	Will pay via a \$2,500 loan against his 401(k) account; loan paperwork was being processed when the record closed (Exhibits D and E).
SOR ¶ 1.j—collection account for \$3,708.	In repayment plan (Exhibit A).

In his response to the SOR, Applicant denied the indebtedness in SOR ¶ 1.a because a collection lawsuit for this debt was dismissed in June 2006 (Exhibit C). Further research, however, revealed that the debt is still outstanding with a balance of \$4,013, and it was added to the repayment program (Exhibit E at 1, 4, and 5).

In December 2007, Applicant engaged a company to serve as a debt-management agent for three creditors (Exhibit A). With the addition of the debt in SOR ¶ 1.a, it now covers four creditors for about \$13,350. He paid the set-up fees and paid the initial monthly payment of \$201 (Exhibits A and B). It is estimated to be a 24-month plan.

In addition to the debts in the SOR, Applicant is in a repayment agreement with the IRS for tax year 2005 (Tr. 55). He owed the IRS about \$900 due to under withholding of taxes from his military retirement pay. He is paying \$40 monthly to resolve this obligation. Applicant is also indebted to the Defense Department for minor damages to military housing when he retired in 2004 (Tr. 56). He now owes about \$300 and is paying \$40 monthly to resolve it. He is also making \$227 monthly payments on a car loan, and he has three credit card accounts, all of which are current.

Applicant's current financial condition is fairly described as living month-to-month. Including his retirement pay, his net monthly income is about \$4,280 with monthly

expenses of approximately \$3,437, which results in a remainder of \$843 (Tr. 65–70). Despite this positive cash flow, Applicant believes the remainder is spent on unaccounted and unexpected expenses such as car repairs, medical bills, etc. (Tr. 69–70).

Applicant has been married to the same woman since 1984. The couple have two adult children. His wife has not worked on a regular basis since 1997 (Tr. 78–79). Also, she has had medical problems resulting in out-of-pocket expenses. His 20-year-old son is a full-time college student and lives with Applicant. His 25-year-old stepdaughter and her child live across the street from Applicant. As a result, Applicant and his wife provide some financial support to each child. Both Applicant's wife and son are attending college on scholarships thereby reducing educational expenses.

### **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.<sup>3</sup> 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.”<sup>4</sup> A favorable decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.<sup>5</sup> An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.<sup>6</sup> 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.<sup>7</sup> The government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>8</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate

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<sup>3</sup> *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 (10<sup>th</sup> 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.”).

<sup>4</sup> *Egan*, 484 U.S. at 531.

<sup>5</sup> Directive, ¶ 3.2.

<sup>6</sup> Directive, ¶ 3.2.

<sup>7</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>8</sup> Directive, Enclosure 3, ¶ E3.1.14.

facts that have been admitted or proven.<sup>9</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>10</sup> In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>11</sup> The agency appellate authority has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.<sup>12</sup>

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.<sup>13</sup> 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,<sup>14</sup> 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."<sup>15</sup> 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

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<sup>9</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>10</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>11</sup> *Egan*, 484 U.S. at 531.

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

<sup>13</sup> Executive Order 10865, § 7.

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

<sup>15</sup> Revised Guidelines at p. 13.

indicates inability to satisfy debts<sup>16</sup> and a history of not meeting financial obligations<sup>17</sup> within the meaning of Guideline F. The record evidence is more than sufficient to establish these two disqualifying conditions, which raise a security concern.

Guideline F contains six conditions that could mitigate the security concerns.<sup>18</sup> The most pertinent is the fourth MC, as it requires a person to initiate a good-faith effort to repay overdue creditors or otherwise resolve debts.<sup>19</sup> He has made decent efforts to resolve the delinquent debts as established by the table above. The six collection accounts for a total of about \$671 will be repaid in the near future via the 401(k) loan, which was being processed when the record closed. The four major debts for a total of about \$13,350 are being addressed through the repayment plan. And the judgment for \$1,934 was paid off in 2006. With the retirement pay and current salary, he has sufficient income to pay for his family's living expenses and other recurring obligations. His efforts are sufficient to constitute a good-faith effort within the meaning of the guideline.

This case has also been considered under the whole-person concept. Applicant is 49 years old and sufficiently mature to make prudent decisions about his finances. He has demonstrated his maturity and good judgment by taking positive, concrete actions to address his history of the financial problems. To that end, Applicant has (1) a realistic and workable plan to resolve his financial problems, (2) documented actions taken in furtherance of the plan, and (3) shown a measurable improvement to the situation. It appears Applicant is working seriously to resolve his indebtedness. In addition, Applicant has 20 years of honorable military service and retired as a Navy chief petty officer. This circumstance strongly suggests that Applicant has the requisite self-control, good judgment, reliability, trustworthiness, and ability to properly handle and safeguard classified information.

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. Although he should have acted sooner to address his financial problems and did not present a perfect case in mitigation, he 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.

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<sup>16</sup> DC 1 is "inability or unwillingness to satisfy debts."

<sup>17</sup> DC 3 is "a history of not meeting financial obligations."

<sup>18</sup> Revised Guidelines at p. 14.

<sup>19</sup> MC 4 is "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."

### **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.k	For Applicant

### **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