



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



In the matter of:

SSN: -----

Applicant for Security Clearance

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ISCR Case No. 07-09261

Appearances

For Government: D. Michael Lyles, Esquire, Department Counsel
For Applicant: *Pro Se*

May 14, 2008

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to deny or revoke his 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 November 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. 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 September 1, 2006. They supersede or replace the guidelines published in Enclosure 2

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).

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 December 26, 2007, and he requested a hearing. The case was assigned to me on February 27, 2008. The hearing took place as scheduled on April 16, 2008. The transcript (Tr.) was received on April 23, 2008.

The record was kept open until April 30, 2008, to allow Applicant an opportunity to submit additional documentary evidence. He timely submitted post-hearing matters, which were forwarded by department counsel without objections. The post-hearing matters are admitted as follows: (1) Exhibit E—cover letter; (2) Exhibit F—student loan documents; (3) Exhibit G—satisfaction of judgment documents; (4) Exhibit H—university transcript; and (5) Exhibit I—university program of study.

Procedural Rulings

Without objections, Applicant's Answer was amended to correct a transposition error (Tr. 23–24). His response to SOR ¶ 1.c is amended to address SOR ¶ 1.d. Likewise, his response to SOR ¶ 1.d is amended to address SOR ¶ 1.c

Findings of Fact

Under Guideline F, the SOR alleges a history of financial problems as follows: (1) four unpaid delinquent debts; (2) a judgment obtained in 2006 for \$7,410; and (3) six student loans referred for collection. His Answer was mixed. He denied the two debts alleged in SOR ¶¶ 1.a and 1.b, and he admitted the remaining allegations in SOR ¶¶ 1.c–1.k. Also, he provided an explanation for the debts as well as his overall financial situation. 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. He has worked for this company as a cost analyst since February 2005. He is seeking to obtain an industrial security clearance for the first time.

Applicant has never married and has no children. He attended college during 1995-2000 and graduated with a bachelor's degree in accounting. His student loans stem from this period. Since college, his employment history has been varied, to include traditional accounting jobs, self-employment as a cable TV installer, and working in a cabinet shop. The result was, at times, an inability to meet his financial obligations.

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 decided to return to a desk job in 2005 when he accepted his current job as a cost analyst. He enjoys his work and plans on continuing to work for his current employer. To that end, his company is paying for him to obtain a degree in electrical engineering because he will be a more valuable employee with engineering and technical skills (Tr. 42; Exhibits H and I).

Applicant's history of financial problems is well documented (Exhibits 2, 3, and 4). The matters alleged in the SOR are established by Applicant's admissions and the admitted documentary evidence. Except for the student loans, Applicant has paid or settled the debts, and he provided documentary evidence as proof-of-payment. He defaulted on the student loans and the loans went into collection. Since about early 2007, he has made regular monthly payments, via a garnishment, on the student loans. The debts, as alleged in the SOR, are summarized in the following table.

<i>Debt Description</i>	<i>Status</i>
SOR ¶ 1.a—\$166 collection account.	Paid \$166 in Feb. 2008 (Exhibit D).
SOR ¶ 1.b—\$294 collection account.	Paid \$294 in Feb. 2008 (Exhibit C).
SOR ¶ 1.c—\$1,842 charged-off account for a credit card bill.	Settled for \$3,400 in Dec. 2007 (Exhibit A, Attachment 2).
SOR ¶ 1.d—\$7,441 collection account for a credit card bill.	Same debt as SOR ¶ 1.k.
SOR ¶¶ 1.e–1j—six student loans for various amounts referred for collection in about 2003.	Making regular monthly payments since early 2007; balance of \$16,860 as of Apr. 2008 (Exhibit A, Attachment 3; Exhibit F).
SOR ¶ 1.k—\$7,410 judgment obtained in Dec. 2006.	Settled for \$6,320 in Oct. 2007 (Exhibit A, Attachment 1; Exhibit B; Exhibit G).

In addition to the payments, Applicant has taken other steps to improve his overall financial condition. He has not had a rent payment since about July 2006 when he moved into his parents' home. He is taking care of their house as his parents are working in Iraq. He expects that situation to continue for another 12 to 18 months and he will likely move out at that time. Also in 2006, he sold his truck thereby eliminating a large monthly loan payment. He used the sale proceeds to buy a used car for cash.

Applicant is now able to meet his expenses and debt payments. He recently opened a secured credit card account to improve his credit history. He contributes to a 401(k) retirement account and has a balance of about \$11,000. He has about \$1,300 in the bank between checking and savings accounts. In the next 60 days or so, he expects to receive about \$9,500 before taxes from a sale of stock associated with the purchase of his company.

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 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

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.

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

(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. 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 delinquent debts and the student loans in collection are more than sufficient to establish these two disqualifying conditions.

The guideline provides that certain conditions¹⁸ may mitigate security concerns. The most pertinent is MC 4, which requires a person to initiate a good-faith effort to repay overdue creditors or otherwise resolve the debts. Applicant has done much to demonstrate an intent to clean up his financial house. As summarized in the table above, he has paid or settled four debts for a total of about \$10,180. He has made regular monthly payments, albeit by a garnishment, on the student loans since early

¹³ Executive Order 10865, § 7.

¹⁴ Revised Guidelines at pp. 13–14 (setting forth the security concern and the disqualifying and mitigating conditions under Guideline F).

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 Revised Guidelines at 14.

2007, and he has made progress in reducing the balance. Also, he has taken other steps to reduce his expenses. Taken together, these circumstances are substantial evidence of a good-faith effort within the meaning of the guideline.

To sum up under the whole-person concept, Applicant struggled financially after graduating from college and entering the workforce. His irregular employment affected his ability to pay his debts. He has had steady employment in his current job since 2005, and he intends to continue working for this company. His overall financial condition has improved, he is now exercising more financial responsibility, and it is unlikely that he will experience similar financial problems in the future.

To conclude, Applicant presented sufficient evidence to rebut, explain, extenuate, or mitigate the security concerns. Applicant met his 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.k:	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