



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



In the matter of:)
)
-----) ISCR Case No. 07-10310
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: *Pro Se*

April 22, 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 7, 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.

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 replied to the SOR on December 18, 2007. Thereafter, in January 2008, he indicated he did not wish to have a hearing. Accordingly, the case will be decided based on the written record in lieu of a hearing.

On February 20, 2008, the government submitted its written case consisting of all relevant and material information that could be adduced at a hearing. This so-called file of relevant material (FORM)³ was mailed to Applicant on February 27th and it was received by him on March 8th. Applicant replied to the FORM with a one-page memorandum plus attachments on March 31st. Collectively, his response will be considered as Applicant's Exhibit A. The case was assigned to me April 17, 2008. For the reasons discussed below, this case is decided against Applicant.

Findings of Fact

Under Guideline F, the SOR alleges five delinquent or past-due debts ranging from \$536 to \$14,786 for about \$24,824 in total; it also alleges Applicant was 120-days past due on a real estate mortgage. In his response to the SOR, Applicant admitted two debts and the past-due real estate mortgage, and he denied three debts. Based on the record evidence as a whole, the following facts are established by substantial evidence.

Applicant is a 33-year-old employee of a defense contractor. He married in July 2000 and divorced in December 2001; he has no children. His educational background includes a bachelor's degree awarded in 1996.

His employment history includes serving as an active duty Army officer from August 1996 through January 2005 (Exhibit 4). He was unemployed for four months during February–May 2005. He has worked as a field service representative for his current employer since May 2005. He is currently working in Afghanistan in support of U.S. military operations.

Applicant has a history of financial problems that date back to his time in the Army. In his response to the SOR, Applicant agreed that he is a poor financial planner, but says it has no effect on his job. The debts alleged in the SOR are addressed below.

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 documents attached to the government's brief are described as items. They are referred to as exhibits herein.

The first account is described as a collection account for \$7,865 (SOR ¶ 1.a). According to an October 2005 credit report, the account originated in December 2001 as an automobile loan (Exhibit 5). It closed in October 2003 due to repossession with a balance due of \$5,537. Credit reports from 2007 put the balance at \$7,784 and \$7,865 (Exhibits 6 and 8). Applicant described this account in his security-clearance application as a satisfied repossession (Exhibit 1). In his response to the FORM, he indicated this debt should be paid off within the next month. Otherwise, he submitted no paperwork on this account.

The second account is described as a collection account for \$14,786 (SOR ¶ 1.b). The account originated in May 1999 as an automobile loan (Exhibit 5). It closed in April 2001 with a balance of \$18,853 of which \$14,786 was past due. In his response to interrogatories, Applicant noted that no judgment has been obtained and the account was more than seven years old (Exhibit 7). Otherwise, he submitted no paperwork on this account.

The third account is described as a past-due account for \$885 (SOR ¶ 1.c). The account originated in October 2004 as an unsecured installment loan (Exhibit 5). It was 120-days or more past due; the total balance on the account is \$5,633. He denied the account in his response to the SOR, he did not address it in his response to interrogatories, and he did not address it in his response to the FORM.

The fourth account is described as a past-due account for \$752 (SOR ¶ 1.d). The account originated as a telephone account; it became seriously past due and was assigned for collection with a balance of \$752 (Exhibit 5). He denied the account in his response to the SOR, and he claimed he paid it in 2005 in his response to interrogatories. He did not provide proof-of-payment for the account (for example, account statement, cancelled check, or some other paperwork).

The fifth account is described as a past-due account for \$536 (SOR ¶ 1.e). The account originated as a telephone account; it became past due and was placed for collection with a balance of \$536 (Exhibit 5). He denied the account in his response to the SOR, and he claimed he paid it in 2005 in his response to interrogatories. He did not provide proof-of-payment for the account.

The sixth account is described as a past-due real estate mortgage (SOR ¶ 1.f). Applicant made catch-up payments (for example, \$5,000 in September 2007), and the account is now current (Exhibits 7 and A).

In addition to the debts in the SOR, Applicant has addressed other accounts (Exhibit A). In March 2008, he brought current and paid off a credit card account with a payment of \$5,624. He paid off an unsecured \$3,500 loan with two \$1,000 payments in March 2008. Also in March 2008, he paid off a \$761 telephone account that was in a collection or charged-off status. He has another automobile loan with a balance of \$22,178; his monthly payment is about \$820 and the account is current (Exhibits A and 7).

There is some information about Applicant's overall financial condition. His annual income is unknown, but an earnings statement as of September 14, 2007, shows Applicant had a gross income of about \$55,231 (Exhibit 7). The same document also shows he is paying on a 401(k) loan. There is no evidence showing what Applicant may have in checking or savings accounts. Likewise, there is no evidence showing the value of any financial assets or investments.

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 *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.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. His 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 facts are troubling, as they reveal that Applicant was negligent with car loans and telephone accounts. Defaulting on two car loans as an active duty Army officer can only be described as gross negligence. Likewise, the past-due real estate mortgage shows a lack of concern and carelessness. 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 pp. 13–14 (setting forth the disqualifying and mitigating conditions).

¹⁶ Revised Guidelines at p. 13.

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

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

The mitigating conditions under Guideline F have been considered and two deserve discussion. The first is MC 2, which takes into account conditions beyond a person's control provided they acted reasonably under the circumstances.¹⁹ No doubt, Applicant's failed marriage during 2000–2001 and his brief period of unemployment in 2005 caused him some financial pain. But at this point, Applicant can no longer use those events as an excuse. Accordingly, MC 2 does not apply in Applicant's favor.

The other pertinent mitigating condition is MC 4, which requires a person to initiate a good-faith effort to repay overdue creditors or otherwise resolve debts.²⁰ Applicant has resolved one of the six accounts alleged in the SOR by bringing his real estate mortgage current (SOR ¶ 1.f). But the other five accounts in the SOR remain unresolved. In addition to the mortgage, he brought current and paid off a credit card account as well as a delinquent telephone account. Given these circumstances, Applicant receives some credit, but not full credit, under MC 4.

Applicant is a 33-year-old former Army officer who is old enough to act responsibly and make prudent decisions about his finances. But the record evidence shows otherwise. He has had two car loans in collection for years (SOR ¶¶ 1.a and 1.b). For the first, he says he will resolve it within the next month. For the second, he appears to be ignoring it based on its age. He also has three past-due accounts that are unresolved (SOR ¶¶ 1.c, 1.d, and 1.e). He failed to address one account, and he failed to provide proof-of-payment for the two accounts he claims to have paid.

Given the lack of documentation in this case, his claims, representations, and estimations cannot be accepted as facts that a reasonable person might accept as reliable evidence.²¹ Large bureaucratic institutions—like the Defense Department and the security-clearance programs it administers—do not run on word-of-mouth.²² They run on documentation. With the benefit of a college education and military experience, Applicant should be well aware of this concept. The documentation can be stored electronically or on paper, but it is up to Applicant to produce reliable evidence, to include documentary evidence, to rebut, explain, extenuate, or mitigate the facts admitted by him and proven by the record evidence.²³ Although Applicant is not legally required to produce documentary evidence to prevail, the lack of documentation in a

¹⁹ MC 2 is “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.”

²⁰ MC 4 is “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”

²¹ See Directive, Enclosure 3, ¶ E3.1.32.1 (scope of appellate review for findings of fact).

²² Examples of other large bureaucratic institutions that rely heavily on documentation include banks, insurance companies, hospitals, universities, and the Armed Forces.

²³ Directive, Enclosure 3, ¶ E3.1.15.

financial case makes it difficult to reach a favorable decision under the clearly-consistent standard. Accordingly, Guideline F is decided against Applicant.

To conclude, Applicant did not present sufficient evidence to explain, extenuate, or mitigate the security concerns. Applicant did not meet his ultimate burden of persuasion to obtain a favorable clearance decision. In reaching this conclusion, the whole-person concept was given due consideration and that analysis does not support a favorable decision. This case is decided against Applicant.

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:	Against Applicant
Subparagraphs 1.a–1.e:	Against Applicant
Subparagraph 1.f:	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