



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-10749
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

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

July 30, 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 March 6, 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 and Guideline E for personal conduct (falsification of a security-clearance application). For the reasons discussed below, this case is decided against 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

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).

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 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 response to the SOR was received on April 3, 2008, and he requested a decision without a hearing. The government exercised its prerogative under the Directive and timely requested a hearing (Appellate Exhibit I).³ The case was assigned to me on May 19, 2008. The hearing took place as scheduled on June 24, 2008. The transcript (Tr.) was received on July 2, 2008.

The record was left open until July 18, 2008, to allow Applicant an opportunity to submit additional documentary evidence. He did so, and those matters are admitted, without objections, as follows: (1) Exhibit E—cover sheet and letter; (2) Exhibit F—letter from clerk of court; and (3) Exhibit G—TransUnion investigative response to dispute.

Findings of Fact

Under Guideline F, the SOR alleges six delinquent debts for a total of about \$38,000. Under Guideline E, the SOR alleges that Applicant gave deliberately false answers to three questions when he completed a security-clearance application in 2006. His Answer was mixed. He admitted with explanation three of the debts and denied with explanation three debts concerning medical services. He admitted that he gave incorrect answers, but explained that his answers were not deliberately false. Based on the record evidence as a whole, the following facts are established by substantial evidence.

Applicant is a 45-year-old employee of a federal contractor. He has worked for his current employer since May 2006; his position or title is project manager. He works in the field of automatic fire protection, and he is seeking an industrial security clearance for the first time so he can perform duties as a fire inspector at U.S. embassies.⁴

Applicant is currently married to his fourth wife. His first two marriages ended in divorce. His third marriage ended in 2001 when his wife passed away due to a terminal

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 Directive, Enclosure 3, ¶ E3.1.7 (authorizing department counsel to request a hearing within 20 days of receipt of an applicant's answer).

⁴ Directive, ¶ 2.2 (by mutual agreement, the Directive extends to other federal agencies, including the State Department).

illness (cancer). He married his fourth wife in 2002, and he is currently separated. He is the father of four children, two adults and two minors. The two minor children, ages 9 and 16, live with him.

Applicant has a history of financial problems. The six debts alleged in the SOR are addressed below.

The debts in SOR ¶¶ 1.a and 1.d are for credit card accounts for about \$2,375 and \$860 with the same creditor that were charged off in about 2001–2003. Applicant resolved the debts in March 2008 when he agreed to settle with a collection agency for \$800 (Exhibit A; Tr. 39–42, 46).

The debt in SOR ¶ 1.e is for a credit card account for about \$6,048 that was placed for collection in about 2003. Applicant resolved this debt in about March 2007 when he agreed to settle with a collection agency that had brought a lawsuit in about 2006 or 2007 (Exhibit B; Tr. 46–52). It was settled for \$4,750.

The three debts in SOR ¶¶ 1.b, 1.c, and 1.f for \$270, \$672, and \$27,580 are addressed together because the debts are based on medical services provided to Applicant's late wife. Applicant disputes liability for these debts because he believes the hospital was paid in full via medical insurance (Exhibits 3 and C). He disputed these items through credit reporting agencies (Exhibits D and E). It appears the dispute was successful as those matters were deleted or no longer appear on his credit report (Exhibit G).

In 2003, Applicant was sued in state court on a matter related to the medical care for his late wife (Exhibits 3 and C). The complaint alleged damages in excess of \$15,000 because Applicant engaged in wrongful conduct when he received payment from his insurer that he failed and refused to pay for care provided to his wife. Applicant, without legal counsel, filed a response or answer to the lawsuit (Exhibit C). Thereafter, he never heard anything further about the lawsuit and assumed it was dropped. In his post-hearing submission, Applicant provided a letter from a court official who stated that a record name search was conducted and that as of July 15, 2008, Applicant does not have a civil judgment recorded against him in that county (Exhibit F).

Applicant completed a security-clearance application in July 2006 (Exhibit 1). In doing so, he was required to answer several questions about his financial record (Questions 27–29). He answered all of the questions in the negative, thereby denying any derogatory financial information within the scope of the questions. In particular, he answered “no” to the following three questions:

- Question 28a—In the last seven years, have you been over 180 days delinquent on any debt(s)?
- Question 28b—Are you currently over 90 days delinquent on any debts?
- Question 29—In the last seven years, have you been a party to any public record civil court actions not listed elsewhere on the application?

He did not report any of the delinquent debts alleged in the SOR in response to Questions 28a and 28b. Likewise, he did not report the 2003 civil lawsuit in state court that sought damages in excess of \$15,000 in response to Question 29. No mention of these matters was made anywhere in his security-clearance application.

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.⁵ 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.”⁶ A favorable decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.⁷ 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.⁸ 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.⁹ The government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁰ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹¹ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹² In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹³

⁵ *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.”).

⁶ *Egan*, 484 U.S. at 531.

⁷ Directive, ¶ 3.2.

⁸ Directive, ¶ 3.2.

⁹ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁰ Directive, Enclosure 3, ¶ E3.1.14.

¹¹ Directive, Enclosure 3, ¶ E3.1.15.

¹² Directive, Enclosure 3, ¶ E3.1.15.

¹³ *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.¹⁴

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.¹⁵ 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,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. His history of financial problems is a security concern because it indicates inability or unwillingness 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.

¹⁴ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

¹⁵ Executive Order 10865, § 7.

¹⁶ Revised Guidelines at pp. 13–14 (setting forth the security concern and 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."

The guideline also provides that certain conditions may mitigate security concerns:

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;

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

All of the mitigating conditions have been considered, and MC 2, MC 4, and MC 5 apply in Applicant's favor. It appears that the majority of Applicant's financial problems, as alleged in the SOR, were related to the terminal illness of his wife. Applicant has settled the three charged-off credit card accounts and he has disputed the three debts for medical services. On balance, this is sufficient evidence to mitigate the security concern under Guideline F.

Personal conduct under Guideline E²⁰ 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:

Conduct 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

²⁰ Revised Guidelines at 10–12 (setting forth the security concern and the disqualifying and mitigating conditions).

truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.²¹

A statement is false when it is made deliberately (knowingly and willfully). An omission of relevant and material information is not deliberate if the person genuinely forgot about it, inadvertently overlooked it, misunderstood the question, or genuinely thought the information did not need to be reported.

The gravamen of the SOR is the truthfulness of Applicant's answers to Questions 28a, 28b, and 29 in his security-clearance application, as it is clear that he did not report information that was called for by the three questions. He denies that his responses to questions were intentionally false.

For Questions 28a and 28b concerning financial delinquencies, he explained that he was thinking about current debts and did not understand the questions to be asking if he had "ever not paid a debt" and that he was not trying to hide anything as he knew his credit would be checked (Answer). For Question 29 concerning civil court actions, he explained that he assumed the 2003 lawsuit was not legitimate since he heard nothing from the plaintiff after he filed his answer to the lawsuit, and that he was not trying to deliberately mislead anyone on his security-clearance application (Answer). In other words, he believed he did not have to report it because it was not a legitimate lawsuit. In his hearing testimony, he essentially reaffirmed these explanations (Tr. 60–63).

Having had the opportunity to listen to his testimony and observe his demeanor, I conclude that his contentions and explanations are not credible. It is simply too difficult to believe that a man of his age and experience could genuinely believe that it was correct and proper to submit a security-clearance application without mentioning his derogatory financial record given the extraordinary medical expenses for his late wife along with the related civil lawsuit that was brought against him in 2003. The record evidence does not persuade me that Applicant misunderstood the questions, genuinely thought the information did not need to be reported, or made honest mistakes in answering the questions. His explanations are after-the-fact rationalizations. But the record evidence does support a conclusion that he deliberately omitted, concealed, or falsified material facts in response to Questions 28a, 28b, and 29.²²

All of the MC under Guideline E have been reviewed and none apply in Applicant's favor. Making false statements to the federal government during the security-clearance process is serious misconduct, and it is not easily explained away, extenuated, or mitigated. Accordingly, Guideline E is decided against Applicant.

²¹ Revised Guidelines at 10.

²² DC 1 is the "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities."

To conclude, Applicant did not present sufficient evidence to explain, extenuate, or mitigate the personal conduct security concern. 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 section E3.1.25 of Enclosure 3 of the Directive, are:

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