



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 07-12543
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

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

July 3, 2008

**Decision**

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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,<sup>1</sup> the Defense Office of Hearings and Appeals (DOHA) issued a statement of reasons (SOR) to Applicant on December 21, 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 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 Information (Revised Guidelines) approved by the President on December 29, 2005. The Revised Guidelines were then modified by the Defense Department, effective

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<sup>1</sup> 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.<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's response to the SOR was received on February 12, 2008, and she requested a hearing. The case was assigned to me on April 10, 2008. The hearing took place as scheduled on June 5, 2008. The transcript (Tr.) was received on June 16, 2008.

### **Procedural Rulings**

On the government's motion, the SOR was amended to delete the allegation in ¶ 1.j because it erroneously duplicated the allegation in ¶ 1.i. Applicant had no objections, and the motion was granted.

### **Findings of Fact**

Under Guideline F, the amended SOR alleges 13 delinquent debts ranging from \$137 to \$9,070 for about \$50,000 in total. The delinquent debts include collection accounts, charged-off accounts, and two unpaid judgments. Her Answer was mixed. Based on the record evidence as a whole, the following facts are established by substantial evidence.

Applicant is a 43-year-old employee of a federal contractor. She worked for a federal contractor from 1986 to 2002. She started working in production, but changed to a security officer position in 1991 or 1992. In 2002, the security function was sold off to a security company, and Applicant became an employee of that company with the same duties at the same location. In short, she has been continuously employed in the defense industry since 1986.

She is now seeking to retain a security clearance previously granted to her. To that end, she completed a security-clearance application in February 2007 (Exhibit 1). In response to questions about her financial record, she disclosed wage garnishments in 2004 and 2005 as well as delinquent credit card accounts.

Applicant has married twice. Her first marriage ended in divorce in 1999. That marriage produced two sons who are now young adults living on their own. She remarried in 2002, and she now has four adult stepsons. A 19-year-old stepson is living with Applicant and her husband.

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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).

Applicant's change of employers in 2002 resulted in a loss of pay and benefits. For example, she went from earning \$11.75 per hour to \$9.50 per hour. Her wage is now \$11.00 per hour. In March 2007, her husband was laid off from his job with a state highway department (Tr. 38–40). He was unemployed until about September 2007 when he accepted a part-time position. He now has a full-time position and benefits working for a maintenance department of a local college.

Applicant traces her financial problems to 1999 when she divorced and accepted several credit card offers (Tr. 21–22, 43–44). Her history of financial problems is well documented (Exhibits 1–3). For example, a February 2007 credit report contains two unpaid judgments for \$4,000 and \$3,663, multiple accounts with derogatory information (e.g., past due, bad debt, assigned for collection), and six accounts in the collections section of the report (Exhibit 2). The delinquent debts in the SOR are established by Applicant's admissions, her testimony, and the credit reports.<sup>3</sup> Although she claimed to have paid some of the debts, she did not present any documentary evidence showing that she has paid in full, settled, or resolved any of the debts in the SOR.

## 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>4</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>5</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>6</sup> 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.<sup>7</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.

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<sup>3</sup> It is assumed the three debts alleged in SOR ¶¶ 1.a, 1.c, and 1.d are one debt because it involves the same creditor and Applicant recalls having only one credit card account with this company.

<sup>4</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>5</sup> *Egan*, 484 U.S. at 531.

<sup>6</sup> Directive, ¶ 3.2.

<sup>7</sup> Directive, ¶ 3.2.

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>8</sup> The government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>9</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>10</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>11</sup> In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>12</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>13</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>14</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>15</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

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<sup>8</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>9</sup> Directive, Enclosure 3, ¶ E3.1.14.

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

<sup>11</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>12</sup> *Egan*, 484 U.S. at 531.

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

<sup>14</sup> Executive Order 10865, § 7.

<sup>15</sup> Revised Guidelines at pp. 13–14 (setting forth the security concern and the disqualifying and mitigating conditions under Guideline F).

information.”<sup>16</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. Her history of financial problems is a security concern because it indicates inability or unwillingness to satisfy debts<sup>17</sup> and a history of not meeting financial obligations<sup>18</sup> within the meaning of Guideline F. The record evidence is more than sufficient to establish these two disqualifying conditions. It appears Applicant was financially irresponsible when she used credit cards to make purchases she could not afford and otherwise lived beyond her means. Her delinquent debts are both longstanding and ongoing.

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; and,

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

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<sup>16</sup> Revised Guidelines at p. 13.

<sup>17</sup> DC 1 is “inability or unwillingness to satisfy debts.”

<sup>18</sup> DC 3 is “a history of not meeting financial obligations.”

All of the mitigating conditions have been considered and none apply in Applicant's favor. In particular, MC 2—conditions largely beyond a person's control—has some potential application. Applicant's divorce in 1999, the change of employers in 2002, and her husband's brief unemployment no doubt affected her overall financial condition and these matters were largely beyond her control. But she did not act responsibly under the circumstances when she used credit cards in an irresponsible manner.

Another potential mitigating condition is MC 4, which requires a person to initiate a good-faith effort to repay overdue creditors or otherwise resolve debts. She has done little to demonstrate an intent to clean up her financial house. Although she claims to have made payments or paid some of the debts, she has not presented any reliable documentary information to establish her claims. Based on this record, her efforts are not enough to qualify as a good-faith effort. Indeed, what is missing here is: (1) a realistic and workable plan; (2) documented actions taken in furtherance of the plan; and (3) a measurable improvement to the situation. In simple terms, she did not present sufficient evidence to establish her case.

To conclude, Applicant did not present sufficient evidence to explain, extenuate, or mitigate the security concerns. Applicant did not meet her 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:	Against Applicant
Subparagraphs 1.a–1.i:	Against Applicant
Subparagraph 1.j:	Deleted
Subparagraphs 1.k–1.n:	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