



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-13545
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

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

July 24, 2008

Decision

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,¹ the Defense Office of Hearings and Appeals (DOHA) issued a statement of reasons (SOR) to Applicant on February 29, 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. 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

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's response to the SOR was received on March 25, 2008, and she requested a hearing. The case was assigned to me on May 6, 2008. The hearing took place as scheduled on June 25, 2008. The transcript (Tr.) was received on July 3, 2008.

The record was left open until July 18, 2008, to allow Applicant an opportunity to submit additional documentary evidence. She did so, and those matters are admitted, without objections, as follows: (1) Exhibit D—cover letter; (2) Exhibit E—divorce decree; (3) Exhibit F—recent pay stub; (4) Exhibit G—401(k) account information; and (5) Exhibit H—proof of payment for the gas bill in collection.

Findings of Fact

Under Guideline F, the SOR alleges four delinquent debts for a total of about \$41,000. The delinquent debts consist of a collection account for a gas bill and three charged-off credit card accounts. In her Answer, she admitted the debts and provided a one-page letter explaining the circumstances surrounding the debts. In addition, the following facts are established by substantial evidence.

Applicant is a 32-year-old employee of a federal contractor. She has worked as a Unix system administrator for this company since March 2007. She is seeking to obtain an industrial security clearance for the first time.

She married in 1994 at age 18, and she divorced in 2005 (Exhibit E). She is raising three children, ages 13, 6, and 3, without the benefit of child support as her ex-husband stopped making \$1,781 monthly payments in about July 2006. She attributes the divorce to her husband's infidelity and abuse of alcohol and drugs (Tr. 45). She relocated to her current state of residence in 2006. In her Answer, she described the circumstances of her relocation as follows:

In the summer of 2005, my marriage ended. In the summer of 2006 my ex-husband became abusive and for safety reasons I quit my job and moved to [State A]. Literally, woke up one morning, quit job, packed two boxes, loaded my car and moved to [State A]. I have been rebuilding ever since. It took 2 months to find another job and it wasn't at the same pay level. I had to start at the bottom again and work my way back up. Things are finally starting to turn around. I'm back in school finishing up my

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).

bachelor's degree. The debt in question will be paid off. Granted, it's not something that will happen over night. It will take time to correct.

In her hearing testimony, she clarified her admissions in that she was disputing responsibility for the collection account and one of the charged-off credit card accounts. She took responsibility for the other two charged-off credit card accounts. Each debt is discussed below.

The debt in SOR ¶ 1.a is a \$402 collection account for a gas bill. It stems from an account that was in Applicant's name when she occupied the marital home before and after the divorce. Her ex-husband moved into the home after her relocation, and he informed Applicant that the account had been taken care of (Tr. 30–31). Her post-hearing exhibit shows the account is paid in full (Exhibit H).

The debt in SOR ¶ 1.b is a \$13,582 charged-off credit card account. This is Applicant's account and she is making monthly payments on it through a collection agency (Tr. 31, 36–38; Exhibit A). The account became delinquent when she relocated and was unemployed for about two months in 2006.

The debt in SOR ¶ 1.c is a \$12,297 charged-off credit card account. This account is the responsibility of her ex-husband, and Applicant is not making payments on it (Tr. 31). The account was made the ex-husband's responsibility in the divorce decree (Tr. 41–42). She has had no collection activity on this debt. She was unable to obtain information about the account because it is in her ex-husband's name, and so the creditor would not speak to her about it (Tr. 42; Exhibit D).

The debt in SOR ¶ 1.d is a \$14,994 charged-off credit card account. This is Applicant's account and she is making monthly payments on it through a collection agency (Tr. 31, 38–39; Exhibit A). The account became delinquent when she relocated and was unemployed for about two months in 2006.

Applicant presented a written monthly budget and supplemented it with her testimony (Exhibit B; Tr. 39). She has a monthly remainder of about \$200 after paying all expenses, including the payments for the two charged-off accounts. The budget is fairly comprehensive and it shows she is not engaging in high living or frivolous spending. For example, her monthly payment for an auto loan is a modest \$220.

Her current annual salary is about \$42,000 (Exhibit F). She plans to increase it (perhaps double it) when she completes her bachelor's degree in two years or so (Tr. 48–49). She recently returned to college to improve her job qualifications and earning power, and she is earning high grades (Exhibit C). She is paying tuition and other expenses with a Pell grant and reimbursement by her employer.

Applicant's overall financial condition is relatively stable, as shown by her monthly budget and financial assets. She has about \$3,000 in a savings account and about \$1,100 in a checking account (Tr. 39–40). In addition, she has about \$7,100 in a

401(k) account (Exhibit G). She is in good standing with her federal and state tax obligations, and she has had no collection activity for any accounts except for the two charged-off debts she is paying off (Tr. 56–57). In addition, she is hopeful her income will soon increase by the resumption of child-support payments (Exhibit D). When she contacted the clerk of court to obtain a copy of the divorce decree, she was put in contact with a person to activate child-support payments. Applicant was informed that she should start receiving child support within two weeks of June 26, 2008.

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

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.

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 (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. A decision to deny or revoke 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. Her history of financial problems is a security concern because it indicates inability (not unwillingness) to satisfy debts¹⁶ and a history of not meeting financial obligations¹⁷ within the meaning of Guideline F. The record evidence is more than sufficient to establish these two disqualifying conditions.

¹¹ *Egan*, 484 U.S. at 531.

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

¹³ Executive Order 10865, § 7.

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

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."

The guideline also provides that certain conditions may mitigate security concerns. The most pertinent here is MC 2, which provides as follows:

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.¹⁸

Applicant receives the full benefit of MC 2. Her financial problems are directly related to a combination of conditions largely beyond her control: (1) the divorce in 2005; (2) the sudden relocation in 2006, which was followed by two months of unemployment; (3) new employment in 2006 at lower wages; and (4) nonpayment of child support since July 2006. In addition to the conditions beyond her control, Applicant acted responsibly under the circumstances when she relocated to remove herself from an abusive and unsafe situation. Also, she demonstrated responsibility by obtaining employment within a couple of months of relocating and by seeking further education to improve her earning power and job qualifications.

Another relevant condition is MC 4, which provides as follows:

The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.¹⁹

MC 4 applies in Applicant's favor for the debts in SOR ¶¶ 1.a, 1.b, and 1.d. The gas bill is paid in full, and she initiated efforts to repay two of the charged-off credit card accounts (Exhibit A). She is doing so with monthly payments.

And the third relevant condition is MC 5, which provides as follows:

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 taken to resolve the issue.²⁰

MC 5 applies in Applicant's favor for the debt in SOR ¶ 1.c. She credibly explained why she is disputing responsibility for the charged-off credit card account. It is her ex-husband's account, and she was unable to obtain information on it because she is not an account holder (Tr. 42). Also, she provided documented proof (the divorce decree) showing that her ex-husband is responsible for any credit card debt separately incurred by him (Exhibit E).

¹⁸ Revised Guidelines at 14.

¹⁹ Revised Guidelines at 14.

²⁰ Revised Guidelines at 14.

This case presents both unfavorable and favorable evidence, which requires thoughtful balancing in light of the whole-person concept and the clearly-consistent standard. I have considered the totality of facts and circumstances and conclude the favorable evidence is more persuasive. The evidence shows that in all likelihood Applicant would have never experienced the financial problems but for her divorce in 2005 followed by the sudden relocation in 2006. Her situation was made more difficult by unemployment for two months in 2006 and nonpayment of child support since July 2006. Cumulatively, these circumstances had a profound effect on Applicant's overall financial condition. To her credit, she is rebuilding her life, to include her financial record, and her circumstances are improving.

In addition, despite the difficult circumstances, the evidence in no way suggests Applicant engaged in illegal activities to generate funds, which is a concern under Guideline F. Instead, the evidence shows that Applicant has demonstrated fortitude in the face of challenging circumstances that were largely beyond her control. Indeed, given the challenging circumstances, her overall financial condition is remarkably stable. And with sufficient time, it appears likely that Applicant will favorably resolve the remaining indebtedness.

To conclude, Applicant presented sufficient evidence to explain, extenuate, or mitigate the security concerns. Applicant met her 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
Subparagraphs 1.a–1.d:	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