



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-14045
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

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

May 12, 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 January 10, 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 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

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 Answer was received on February 4, 2008, and she requested a hearing. The case was assigned to me on March 7, 2008. The hearing took place as scheduled on April 17, 2008. The transcript (Tr.) was received on April 23, 2008.

Procedural Rulings

Applicant is unable to hear and unable to speak. Therefore, the hearing was conducted, without objections, with the aid of a certified interpreter for the deaf provided by Applicant's employer (Tr. 4-7; Appellate Exhibit I).

Findings of Fact

Under Guideline F, the SOR alleges a history of financial problems as follows: (1) a Chapter 7 bankruptcy case filed in 1998 and discharged in 1999; (2) an unpaid judgment obtained in 2007 for \$1,515; and (3) eight delinquent debts ranging from \$487 to \$25,154 for about \$36,000 in total. Her Answer was mixed. She admitted the bankruptcy, the unpaid judgment, and one of the delinquent debts, and she denied the other delinquent debts. Based on the record evidence as a whole, the following facts are established by substantial evidence.

Applicant is a 61-year-old employee of a federal contractor. She has worked for this company as a custodian since April 2007. She is seeking to obtain an industrial security clearance for the first time.

Applicant has been married since 1968. Her husband is retired and receives a pension. Also, he receives social security disability due to several health problems. They had one child, a daughter, who is now an adult. They do provide irregular financial support for their grandchildren.

Applicant's history of financial problems is well documented (Exhibits 2, 3, 4, and 5). Starting with the Chapter 7 bankruptcy alleged in SOR ¶ 1.a, Applicant and her husband filed for bankruptcy protection in November 1998 (Exhibit 4). The summary of schedules lists total assets of \$67,820 and total liabilities of \$105,031. The Schedule F lists \$42,302 in unsecured debt based on credit card accounts and signature loans. The bankruptcy court granted a discharge in March 1999. Applicant acknowledges the

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).

bankruptcy was necessary because she and her husband were unable to pay debts and expenses (Tr. 36).

The unpaid judgment and delinquent debts in the SOR are established by Applicant’s admissions and the admitted documentary evidence. She has not paid, settled, or resolved any of the debts. She did not produce any documentation concerning the debts at issue. The debts, as alleged in the SOR, are summarized in the following table.³

Debt Description	Status
SOR ¶ 1.b—judgment for \$1,515.	Unpaid.
SOR ¶ 1.c—collection account for \$501.	Admits it is her account; unpaid.
SOR ¶ 1.d—charged-off account for \$25,154.	Admits it is her account; unpaid.
SOR ¶ 1.e—past-due account for \$670.	Claims she is making monthly payments.
SOR ¶ 1.f—charged-off account for \$1,065.	Admits it is her account; unpaid.
SOR ¶ 1.g—charged-off account for \$1,483.	Unsure if it is her account.
SOR ¶ 1.h—collection account for \$2,960.	Admits it is her account; unpaid.
SOR ¶ 1.i—charged-off account for \$487.	Unsure if it is her account.
SOR ¶ 1.j—collection account for \$3,755.	Unsure if it is her account.

Applicant has always been responsible for managing the family’s financial affairs; indeed, her husband has never had credit. In addition to her husband’s pension, she receives a pension based on an early retirement from federal employment. She admits making mistakes and overextending with credit cards and loans (Tr. 35). Neither she nor her husband has any money in the bank (Tr. 46). She acknowledges that they live paycheck-to-paycheck or month-to-month (Tr. 46).

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

³ See Applicant’s testimony at Tr. 28–35.

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

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.”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 and retention of any existing security clearance.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 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

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.

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

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. Her 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 Chapter 7 bankruptcy and the post-bankruptcy delinquent debts are more than sufficient to establish these two disqualifying conditions. It appears Applicant has lived beyond her means and has been financially irresponsible or lackadaisical.

All of the mitigating conditions under Guideline F have been considered and none apply.¹⁹ Applicant has done little to demonstrate an intent to clean up her financial house. Concerning the unpaid judgment and other debts, 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 rebut, 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

¹⁴ Executive Order 10865, § 7.

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

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."

¹⁹ Revised Guidelines at 14.

