



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-14095
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

May 21, 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 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 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 September 1, 2006. They supersede or replace the guidelines published in Enclosure 2

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).

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 1, 2008, and he requested a hearing. The case was assigned to me on March 7, 2008. The hearing took place as scheduled on April 18, 2008. The transcript (Tr.) was received on April 28, 2008.

The record was kept open until May 9, 2008, to allow Applicant an opportunity to submit additional documentary evidence. He timely submitted post-hearing matters, which were forwarded by department counsel without objections. The post-hearing matters are admitted as follows: Exhibit I—fax cover sheet with five attachments; and Exhibit J—fax cover sheet with one attachment.

Findings of Fact

Under Guideline F, the SOR alleges a history of financial problems as follows: (1) seven unpaid collection accounts in amounts ranging from \$100 to \$6,646 for a total of about \$12,377; and (2) a state tax debt with a balance of about \$1,742. His Answer was mixed. He admitted owing the tax debt and five of the seven collection accounts, but he disputed the amount owed for two collection accounts. Also, he provided an explanation for each of the debts. Based on the record evidence as a whole, the following facts are established by substantial evidence.

Applicant is a 34-year-old employee of a federal contractor. He has worked for this company as a project administrator since about March 2007. He is seeking to obtain an industrial security clearance for the first time. He earned a B.A. in political science in 2001.

Applicant has married the same woman twice. They married in 2000, divorced in 2004, and married again in 2005. They have two young children. His wife is a teacher for a local school, and she was recently granted tenure. Their youngest child was born in early 2007 causing his wife to take leave without pay for about six months before returning to full-time work in August 2007.

Applicant has a history of financial problems, which he does not dispute (Exhibits 2 and 3). He attributes his financial problems to three primary factors: (1) a business failure (a restaurant) in 2001–2002, shortly after graduating from college; (2) an inability to find steady employment after the business failure; and (3) by not making debt repayment a priority coupled with living on one income for about six months after the birth of his second child (Exhibit 3—Answer to Interrogatory 2). The business failure

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).

resulted in delinquent credit cards, repossession of a car, termination of a cell phone, and three state tax liens due to unpaid sales tax from the business. The financial problems were a significant factor in the divorce.

The matters alleged in the SOR are established by Applicant's admissions and the admitted documentary evidence. The debts, as alleged in the SOR, are summarized in the following table.

<i>Debts</i>	<i>Status</i>
SOR ¶ 1.a—\$100 collection account based on a cell phone account.	Paid (Exhibit B).
SOR ¶ 1.b—\$6,646 collection account based on a car repossession in 2003.	In settlement negotiations (Exhibit A—Attachment 1; Exhibit I—Attachment 3).
SOR ¶ 1.c—\$3,055 collection account based on a credit card account, which was reduced to a consent judgment.	In payment plan with law firm; will complete in June 2008 (Exhibit 3; Exhibit A—Attachment 2; Exhibit G).
SOR ¶ 1.d—\$269 collection account based on a credit card account.	Paid (Exhibit 3; Exhibit A—Attachment 3; Exhibit I—Attachment 5; Exhibit J).
SOR ¶ 1.e—\$399 collection account based on health club membership.	Current balance is \$335; intends to payoff with proceeds from 2008 economic stimulus payment of \$1,200 (Exhibit 3; Exhibit A—Attachment 4; Exhibit I—Attachment 4; Tr. 88–90).
SOR ¶ 1.f—\$709 collection account based on a former bank checking account.	No contact with creditor; intends to payoff by Dec. 2008 (Tr. 90–91; Exhibit E).
SOR ¶ 1.g—\$1,119 collection account based on a credit card account.	Intends to address in July 2008 once the payment plan in ¶ 1.c is completed (Tr. 91–93).
SOR ¶ 1.h—\$1,742 state tax debt based on sales tax owed from failed business.	Paid; total balance was at least \$6,851 at one time (Exhibit 2; Exhibit 3; Exhibit A—Attachments 5 and 6; Exhibit C; Exhibit I—Attachment 1).

After their second marriage in 2005, Applicant and his wife were able to finance the purchase of a home and their mortgage is current. Applicant prepared a detailed monthly budget and it shows a positive cash flow of about \$178 (Exhibit F). He has recently enrolled in a church-based financial program designed to teach people how to make the right decisions about their money (Exhibit I—Attachment 2).

Applicant is well regarded at his place of work. His supervisor believes Applicant is a trustworthy and honest employee (Tr. 36). The supervisor gave Applicant excellent ratings in a recent performance review (Exhibit D). The supervisor believes Applicant is a motivated, driven, and valuable employee (Tr. 40). Likewise, a coworker, who is a computer engineer employed by the government, believes Applicant is a professional, proficient employee with good potential (Tr. 42–49).

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 Court stated that the burden of proof is less than a preponderance of the evidence.¹¹

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.

¹¹ *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.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. The decision to deny a person 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. His history of financial problems is a security concern because it indicates inability to satisfy debts¹⁶ and a history of not meeting financial obligations¹⁷ within the meaning of Guideline F. The collection accounts and state tax debt are more than sufficient to establish these two disqualifying conditions. Likewise, the same facts and circumstances support a conclusion of financial irresponsibility.

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 under Guideline F).

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 provides that certain conditions¹⁸ may mitigate security concerns. The six mitigating conditions are as follows:

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.

MC 2, MC 3, and MC 4 receive favorable consideration and are discussed below; the others do not apply to the facts and circumstances here.

MC 2—conditions largely beyond a person's control—applies in Applicant's favor. The business failure, the divorce, the inability to find a steady job, and his wife's leave without pay were all factors in Applicant's financial problems and were all largely beyond his control, especially the business failure. He has acted somewhat belatedly but still responsibly under the circumstances by paying off the state tax debt generated by the business failure.

MC 3—counseling for the problem—applies in Applicant's favor. This MC applies based on his recent enrollment in a church-based financial program designed to teach people how to make the right decisions about their money.

MC 4—good-faith effort to repay—applies in Applicant's favor. He presented substantial documentary evidence to demonstrate an intent to clean up his financial house. As summarized in the table above, he has paid two collection accounts as well

¹⁸ Revised Guidelines at 14.

as the most security significant debt—the state tax debt. He has a payment plan for one account that should be completed next month. And he has realistic plans to address the other collection accounts in the near future. Taken together, these circumstances are substantial evidence of initiating a good-faith effort within the meaning of the guideline.

To sum up under the whole-person concept, Applicant struggled financially after the business failure and divorce. To their credit, he and his wife reconciled and remarried. They now have good jobs that produce regular income, as evidenced by their ability to qualify for a home mortgage. He is making reasonable efforts to improve his overall financial condition, he is now exercising more financial responsibility (for example, the monthly budget), and it is unlikely that he will experience similar financial problems in the future. Although he did not present a perfect case in mitigation by paying off all the debts, he did present an adequate case in mitigation.

To conclude, Applicant presented sufficient evidence to rebut, explain, extenuate, or mitigate the security concerns. Applicant met his 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.h:	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