



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



In the matter of:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 07-14752

**Appearances**

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

July 10, 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,<sup>1</sup> the Defense Office of Hearings and Appeals (DOHA) issued a statement of reasons (SOR) to Applicant on February 25, 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

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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 March 21, 2008, and he 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.

The record was left open until June 20, 2008, to allow Applicant an opportunity to submit documentary evidence. He made a timely submission and those matters are admitted, without objections, as follows: (1) Exhibit A—letter summarizing Applicant's employment record at his current employer; (2) Exhibit B—property settlement agreement from his 1994 divorce; and (3) Exhibit C—paperwork related to a debt-management plan from 1999-2000.

### **Findings of Fact**

Under Guideline F, the SOR alleges eight delinquent debts ranging from \$399 to \$7,449 for about \$37,500 in total. The delinquent debts include credit card accounts, a phone bill, and other consumer debts. In his Answer, he admitted the debts and indicated that the \$399 phone bill was paid in March 2008. In addition, the following facts are established by substantial evidence.

Applicant is a 54-year-old employee of a federal contractor. He has worked for this company since August 2004. He is seeking to obtain an industrial security clearance for the first time. He completed a security-clearance application in November 2005 (Exhibit 1). In doing so, he disclosed a number of delinquent accounts and provided a brief explanation for his financial condition.

Applicant has married twice. His first marriage ended in divorce in 1994. There are three children of that marriage and they are now adults living on their own. As a result of the divorce, Applicant was required to pay child support and provide comprehensive medical and dental insurance for his then minor children (Exhibit B). Each spouse became the sole owner of a vehicle and Applicant took on debt for his vehicle. In addition, he agreed to be responsible for six of eight debts stemming from credit card or other consumer accounts.

Applicant remarried in February 1998, and he became the stepfather to two children both of whom are now adults living on their own. Sometime in late 1998 or early

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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).

1999, Applicant's regular overtime at the paper mill was reduced due to an equipment upgrade. As a result, he had difficulty paying some bills. Then in late 2000, Applicant, along with 500 to 600 other employees of the mill, learned that the company was closing the mill in 90 days. Applicant—who had worked at the mill since September 1981—found himself without a job in January 2001.

Applicant returned to school as part of a program to retrain workers. Initially, he was required to exhaust 26 weeks of unemployment benefits before receiving grant money. He was a student at a local university from January 2001 until his graduation in May 2003 when he was awarded an associate's degree in computer networking technology.

Finding gainful employment proved difficult for Applicant. From May 2003 until he started his current job in August 2004, Applicant had two jobs where he was underemployed and two periods of unemployment for a total of about five months. He was hired by the federal contractor as a material handler and he has since been advanced in that line of work. He now earns about \$29,000 annually as compared with the \$50,000 to \$55,000 he made at the mill. He has a good employment record as evidenced by favorable ratings he received for 2005–2007 (Exhibit A).

Applicant describes his current financial condition as tight, but making it. In March 2008, he paid the \$399 phone bill alleged in SOR ¶ 1.g. Otherwise, he has not paid, settled, or otherwise resolved the remaining seven delinquent debts in the SOR. Applicant has a number of accounts that are in good standing, to include a loan on a mobile home, a lease for the land for the mobile home, and a car payment. Applicant would like to pay off the delinquent debts, but he simply does not have the extra income to do so after paying for his regular expenses.

## **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>3</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>4</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>5</sup> An unfavorable decision: (1) denies any application; (2) revokes any existing security clearance; and (3) prevents access to classified information at any

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<sup>3</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>4</sup> *Egan*, 484 U.S. at 531.

<sup>5</sup> Directive, ¶ 3.2.

level and retention of any existing security clearance.<sup>6</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.

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>7</sup> The government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>8</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>9</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>10</sup> In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>11</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>12</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>13</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.

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<sup>6</sup> Directive, ¶ 3.2.

<sup>7</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>8</sup> Directive, Enclosure 3, ¶ E3.1.14.

<sup>9</sup> Directive, Enclosure 3, ¶ E3.1.15.

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

<sup>11</sup> *Egan*, 484 U.S. at 531.

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

<sup>13</sup> Executive Order 10865, § 7.

## Analysis

Under Guideline F for financial considerations,<sup>14</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 information.”<sup>15</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. His history of financial problems is a security concern because it indicates inability (not unwillingness) to satisfy debts<sup>16</sup> and a history of not meeting financial obligations<sup>17</sup> within the meaning of Guideline F. The record evidence is more than sufficient to establish these two disqualifying conditions.

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.

Applicant receives the full benefit of MC 2. His financial problems can be traced back to a combination of conditions largely beyond his control: (1) his divorce in 1994; (2) the reduction of overtime in 1998–1999; (3) his unexpected job loss in January 2001 after working nearly 20 years for a paper mill; and (4) his period of underemployment and unemployment during 2003–2004. Indeed, the mill closure was a devastating financial event from which Applicant has yet to fully recover as shown by the huge reduction in annual income (\$55,000 to \$29,000). In addition to the conditions beyond his control, Applicant acted responsibly under the circumstances when he sought further education to improve his job skills and employment prospects, and when he sought and took work where he could find it.

This case presents both unfavorable and favorable evidence, which requires thoughtful balancing in light of the whole–person concept and the clearly-consistent

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

<sup>15</sup> Revised Guidelines at p. 13.

<sup>16</sup> DC 1 is “inability or unwillingness to satisfy debts.”

<sup>17</sup> DC 3 is “a history of not meeting financial obligations.”

standard. I have considered the totality of facts and circumstances and conclude the favorable evidence is persuasive. The evidence shows that in all likelihood Applicant would have never experienced such difficult financial problems but for his unexpected job loss in 2001 when the mill closed. In addition, his efforts to remake himself were made more difficult by underemployment and unemployment after he obtained his degree in 2003.

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. And the evidence in no way suggests Applicant engaged in high living or irresponsible spending on frivolous items. Instead, the evidence shows that Applicant has demonstrated fortitude and he has endeavored to make the best of a bad situation. Taken together, these circumstances suggest that he has the requisite self-control, good judgment, reliability, trustworthiness, and ability to protect classified information. Although Applicant has made little progress in resolving the delinquent debts in the SOR, his lack of progress is not attributable to unwillingness or deliberate avoidance. Given the facts and circumstances here, an unduly rigid or strict application of the guideline is not appropriate.

To conclude, Applicant presented sufficient evidence to 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