



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-16719
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Stephanie C. Hess, Esquire, Department Counsel
For Applicant: *Pro Se*

November 28, 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 May 7, 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.

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).

The Revised Guidelines were then modified by the Defense Department, effective 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 by DOHA on June 30, 2008, and he requested a hearing. The case was assigned to me on August 22, 2008. The hearing took place as scheduled on September 24, 2008. The transcript (Tr.) was received on October 2, 2008.

Findings of Fact

Under Guideline F, the SOR alleges eight delinquent debts ranging from \$52 to \$14,806 for a total of about \$36,320. In his Answer, Applicant denied the two medical debts for a total of \$252 alleged in SOR ¶¶ 1.a and 1.b, but admitted the other debts (which appear to be credit card accounts) for a total of about \$36,000 alleged in SOR ¶¶ 1.c–1.h. Based on the record evidence as a whole, the following facts are established by substantial evidence.

Applicant is a 49-year-old supervisor of a call center. He has worked for his current employer since October 2002. He was promoted to his current position in June 2003. His annual salary is about \$62,000. His employment history includes military service in the U.S. Marine Corps that ended with his honorable discharge. His first marriage ended in divorce. He remarried in 2004. His wife is currently self-employed earning an irregular income that averages about \$1,000 monthly.

Applicant has a history of financial problems, which he does not dispute. The delinquent debts alleged in the SOR are established by Applicant's admissions and the admitted evidence (Exhibits 2 and 3). He denied the two medical debts because he does not recognize them and has been unable to find any information on them. To date, Applicant has not paid, settled, or otherwise resolved any of the debts.

He traces the origin of his financial problems to the period shortly after his second marriage in December 2004. When they married, Applicant and his wife had two homes (his and hers) and they decided to do a major renovation of the larger home. About six months later in June 2005, Applicant had a serious motorcycle accident. He was hospitalized for about two weeks, which included time in intensive care. As a result, he was out-of-work on short-term disability, at two-thirds pay, for about three months. The loss of income resulted in delaying the home renovations and he started to fall behind on bills. Also, he incurred out-of-pocket medical expenses that were not covered

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).

by his health insurance. Applicant and his wife began to rely on credit cards during this period.

Applicant's wife lost her job in 2006. She was unemployed for about three months. The resulting loss of income caused them to fall further behind and continue to delay the home renovation project.

In about January 2006, Applicant and his spouse obtained the services of a company engaged in debt settlement or repayment. They paid a fee of about \$400 per month for about 12 months without any results. Dissatisfied, they terminated their relationship with the company as they continued to fall further behind on their bills.

In about January 2007, they stopped making all credit card payments and devoted their money for necessities and for the home renovation for which Applicant was doing most of the work during his free time. Completing the renovations was necessary because without them the home was neither livable nor sellable.

In about January 2008, Applicant injured his back during a slip-and-fall accident at a neighborhood store. Medical examination of Applicant discovered preexisting back injuries. He initially received a course of non-surgical treatment until it was determined that surgery was necessary. The May 2008 surgery involved the fusing of vertebrae. The full course of medical treatment put Applicant out-of-work on short-term disability, at two-thirds pay, for about five months from March 2008 until he returned to work on about August 18, 2008.

He elected to return to full-time work sooner than recommended due to his mounting financial problems. Also, he started a part-time job working at a home-improvement store in August 2008. He earns \$10 per hour and grosses about \$1,000 per month.

Applicant and his spouse considered bankruptcy, but instead have decided to attempt to pay or settle their debts. The general plan is as follows:

- Renovations are nearly complete and they expect to move into the larger home in early October 2008.
- After the move, they will prepare and clean the smaller home and put it on the market for sale. They plan to price the property aggressively to sell it as quickly as market conditions permit. They think they can sell it within a year and net anywhere from \$30,000 to \$40,000, which they will use to pay or settle the debts.
- In addition, together they have about \$26,000 in 401(k) plans that they can withdraw funds from to pay or settle the debts.

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 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

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.

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

(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 (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.

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;

¹³ Executive Order 10865, § 7.

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

¹⁵ Revised Guidelines at 13.

¹⁶ DC 1 is "inability or unwillingness to satisfy debts."

¹⁷ DC 3 is "a history of not meeting financial obligations."

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; or

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

All the mitigating conditions have been considered and the most pertinent here is MC 2, which concerns events or circumstances largely beyond a person’s control.

Applicant receives credit in mitigation under MC 2 because his financial problems resulted from events or circumstances largely beyond his control and were not due to a lavish lifestyle or general financial irresponsibility. Those events or circumstances were as follows: 1) his motorcycle accident and resulting loss of income in 2005; 2) his wife’s unemployment in 2006; 3) the unsuccessful effort to resolve debt via the debt-settlement company in 2006; and 4) his back injury and surgery and resulting loss of income in 2008. Taken together, these matters had a snowball or cumulative effect, the consequences of which Applicant is still experiencing. It is apparent that Applicant’s financial problems would not have occurred but for these events or circumstances.

In addition, Applicant has acted responsibly under the circumstances. He returned to full-time employment a few months ago in August 2008, and he started a second job the same month. With their move to the renovated home in October 2008, Applicant and his wife are putting themselves in a position where they can address their delinquent debts. They have a reasonable plan, and although it contains contingencies, it is likely to allow them to generate additional money to use in repaying or settling their debts.

To conclude, Applicant presented sufficient evidence to explain, extenuate, or mitigate the security concerns under Guideline F. Applicant met his ultimate burden of persuasion to obtain a favorable clearance decision. In reaching this conclusion, the whole-person concept¹⁸ was given due consideration and that analysis supports a

¹⁸ Revised Guidelines at 1–2 (listing nine factors to consider under the whole-person concept).

favorable decision. Having had the opportunity to listen to his testimony (which I found credible) and observe his demeanor, I am persuaded that Applicant has both the intention and self-discipline to follow through and resolve his delinquent debts once he has the means to do so. Indeed, looking forward to the next 12 to 18 months, it is likely that he will successfully resolve his financial problems.¹⁹ And his financial problems are unlikely to recur given that they occurred under rather unusual circumstances. 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 the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Michael H. Leonard
Administrative Judge

¹⁹ Revised Guidelines at 2 (“the likelihood of continuation or recurrence”).