



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-17564
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

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

September 12, 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 June 12, 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 and Guideline E for personal conduct based on falsification of a security-clearance application. For the reasons discussed below, this case is decided for Applicant.

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).

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 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 July 8, 2008, and he requested a hearing. The case was assigned to me on July 21, 2008. The hearing took place as scheduled on August 12, 2008. The transcript (Tr.) was received on August 20, 2008.

The record was left open until August 26, 2008, to allow Applicant an opportunity to submit additional documentary evidence. No post-hearing matters were received.

Findings of Fact

Under Guideline F, the SOR alleges seven delinquent debts ranging from \$376 to \$19,376 for a total of about \$27,600. Under Guideline E, the SOR alleges that Applicant falsified material facts when he answered three questions about his financial record. He denied the Guideline F allegations and explained that he was working to resolve the debts with assistance of a firm's debt negotiation program. He denied the Guideline E allegations. Based on the record evidence as a whole, the following facts are established by substantial evidence.

Applicant is a 44-year-old employee of a federal contractor. He works as a senior network administrator. His gross annual salary is about \$80,000, although it roughly doubles when he is deployed overseas as has been the case during the last few years (Exhibits B and D). He is seeking to obtain a security clearance.

He is married to his second wife. His first marriage ended in divorce in about 1995. His wife is employed as a nurse for a local school district.

Applicant has a history of financial problems, which he does not dispute. His history of financial problems is established by a 2007 credit report (Exhibit 3).

In March 2008, acting in response to interrogatories that DOHA sent to him, Applicant met with and obtained the services of a company which helps individuals get out of debt and on a path to financial freedom (Exhibit 2). He entered into a 18-month

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).

program in which the company negotiates a settlement of the outstanding debt (Exhibit C). Applicant provided additional funds when he enrolled thereby accelerating the program. His negotiator estimates that as of July 22, 2008, about 80% of the outstanding debt enrolled in the program was settled.

The current status of the seven debts alleged in the SOR is summarized in the following table.³

<i>Debts</i>	<i>Status</i>
SOR ¶ 1.a—\$1,447 collection account.	Settled for \$715 in May 2008 (Exhibit C at 5).
SOR ¶ 1.b—\$1,116 collection account.	Settled for \$541 in June 2008 (Exhibit C at 4).
SOR ¶ 1.c—\$1,682 charged-off account.	Settled for \$880 in August 2008 (Exhibit C at 3).
SOR ¶ 1.d—\$3,162 charged-off account.	Enrolled in negotiation program.
SOR ¶ 1.e—\$443 collection account.	Enrolled in negotiation program.
SOR ¶ 1.f—\$376 collection account.	Amount too small for program; intends to address on his own.
SOR ¶ 1.g—\$19,376 charged-off auto loan.	Settled for \$8,208 in June 2008 (Exhibit C at 2).

To sum up, four of the seven debts are settled. The three that remain total about \$4,000 and should be resolved within the next few to several months.

The largest debt for \$19,376 in SOR ¶ 1.g is based on an auto loan Applicant obtained in about 2002 (Exhibit 3 at 9). Applicant used the vehicle less than a month before returning it to the seller/financier because he was unhappy with it. He had made a deposit or down payment for the purchase, but had not yet made a loan payment. The seller told Applicant they would keep the down payment and Applicant heard nothing more from the seller. Applicant has since learned that the vehicle was sold at an auction. The seller charged-off \$19,176 as a loss, the amount apparently based on a deficiency balance after the sale.

Applicant completed a security-clearance application in January 2007 (Exhibit 1). In doing so, he was required to answer several questions about his financial record. In particular, he answered “no” to the following three questions:

³ See Applicant’s hearing testimony for a narrative description of the debts and their status (Tr. 42–61).

- Question 27 asked about wage garnishments and repossessions in the last seven years. He did not report the auto loan alleged in SOR ¶ 1.g.
- Question 28a asked about debts that were more than 180 days delinquent in the last seven years. He did not report the debts alleged in SOR ¶¶ 1.a – 1.e, and 1.g.
- Question 28b asked about debts that were currently more than 90 days delinquent. He did not report the debts alleged in SOR ¶¶ 1.a – 1.e, and 1.g.

He did not report the auto loan (SOR ¶ 1.g) as a repossession because he did not understand that his return of the car to the seller was considered a voluntary repossession (Tr. 62–63). He did not report any delinquent debts because he was unaware of any that should have been reported in response to the two questions (Tr. 63–66). He thought he was in good standing because he and his wife bought a home with a mortgage loan and his credit history was not an issue. Indeed, a March 2008 credit report shows Applicant obtained a mortgage loan for more than \$200,000 in February 2007 (Exhibit 2). Likewise, it also shows he obtained an auto loan for more than \$30,000 in June 2006.

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 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

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 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).

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 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.

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).

¹⁴ Executive Order 10865, § 7.

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

¹⁶ Revised Guidelines at 13.

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 or unwillingness to satisfy debts¹⁷ and a history of not meeting financial obligations¹⁸ within the meaning of Guideline F. The record evidence is more than sufficient to establish these two disqualifying conditions. Likewise, the evidence is sufficient to establish financial irresponsibility.

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;

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;

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

All the mitigating conditions have been considered, and MC 3 and MC 4 apply in Applicant's favor.

MC 3 applies because Applicant sought out and obtained the services of a financial company in March 2008 to help him address his indebtedness. He has received the benefit of their advice and entered into a debt negotiation program, and the indications are that his indebtedness is being resolved ahead of schedule (Exhibit C).

¹⁷ DC 1 is "inability or unwillingness to satisfy debts."

¹⁸ DC 3 is "a history of not meeting financial obligations."

MC 4 applies based on Applicant's documented efforts to resolve the delinquent debts as revealed in the table above. Although he has not resolved all the debts, he has resolved the vast majority, and about \$4,000 is outstanding. His efforts to date are sufficient to qualify as initiating a good-faith effort to repay overdue creditors or otherwise resolve debts.

Personal conduct under Guideline E¹⁹ includes issues of false statements and credible adverse information that may not be enough to support action under any other guideline. In particular, a security concern may arise due to:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations [that may] raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.²⁰

A statement is false when it is made deliberately (knowingly and willfully). An omission of relevant and material information is not deliberate if the person genuinely forgot about it, inadvertently overlooked it, misunderstood the question, or genuinely thought the information did not need to be reported.

The issue here is the truthfulness of Applicant's answers to Questions 27, 28a, and 28b of his security-clearance application, as he did not report any adverse financial information in response to the questions. Having had the opportunity to listen to his testimony and observe his demeanor, his explanations as set forth in the findings of fact are accepted as credible. The evidence is not sufficient to show that he made deliberately false statements when he answered the three questions.

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. In reaching this conclusion, the whole-person concept was given due consideration and that analysis supports a favorable decision. In particular, I was impressed by the evidence of Applicant's good character (Tr. 26–34; Exhibits A and B). 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:

¹⁹ Revised Guidelines at 10–12 (setting forth the security concern and the disqualifying and mitigating conditions).

²⁰ Revised Guidelines at 10.

Paragraph 1, Guideline F:	For Applicant
Subparagraphs 1.a–1.g:	For Applicant

Paragraph 2, Guideline E:	For Applicant
Subparagraphs 2.a–2.c:	For Applicant

Conclusion

In light of all of the circumstances, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Michael H. Leonard
Administrative Judge