



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



In the matter of:)
)
-----) ISCR Case No. 08-00533
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

September 10, 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 May 19, 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.

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 16, 2008, and she requested a hearing. The case was assigned to me on July 21, 2008. The hearing took place as scheduled on August 13, 2008. The transcript (Tr.) was received on August 21 3, 2008.

The record was left open until August 27, 2008, to allow Applicant an opportunity to submit additional documentary evidence. She did so, and those matters are admitted, without objections, as follows: (1) Exhibit E—monthly budget; and (2) Exhibit F—petition for divorce.

Findings of Fact

Under Guideline F, the SOR alleges ten delinquent debts for about \$29,000 in total. She admitted the ten debts in her Answer. Based on the record evidence as a whole, the following facts are established by substantial evidence.

Applicant is a 37-year-old employee of a federal contractor. She has worked for her current employer since 2006. Her position or title is supply technician, and her duties involve the purchasing of equipment, supplies, and materials. Three fellow employees (the program manager, the administrative manager, and the industrial security manager) have high regard for her ability to perform her job and all three recommend her for a security clearance (Exhibit B).

Applicant has a history of financial problems, which she does not dispute. It appears all the delinquent debts in the SOR are marital debts. The debts include two auto loans that ended in repossession, consumer debts, medical bills, and a utility bill.³

She married in 1989, and she and her husband have three children, ages 18, 16, and 12. They separated for about three weeks in 2005, but reconciled. They separated in October 2006 with the intention of ending the marriage. She has filed a petition for divorce and she thinks the divorce will be final within the next several months (Exhibit F). The divorce petition does not address who will be responsible for specific debts (Exhibit F at 2). But it does indicate that the parties will try to reach an agreement on

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).

³ See Applicant's testimony on the individual debts (Tr. 42–55).

how the debts are divided, and it also asks the court to decide the issue if they cannot agree. Applicant is not seeking spousal maintenance, but she is asking the court to order her husband to pay child support. Her husband is yet to make any interim child support payments, but he lives nearby and is providing financial assistance on an as needed basis (Tr. 57).

She has not paid, settled, or resolved the debts in the SOR except for the debt in SOR ¶ 1.i, which concerns a debt for \$5,773 for membership in a vacation network (Tr. 32). The membership was cancelled, and the company is in the process of making repayment with an anticipated refund payment on or about May 2009 (Exhibit A).

Her intention or plan is to address the debts through a debt-consolidation program once her divorce is final (Tr. 55–57). She believes she could afford to make \$200 monthly payments, and her current monthly budget supports her belief as it shows a remainder of about \$575 (Exhibit E). In addition to the monthly remainder, Applicant estimated that she had about \$700 to \$800 in the bank and about \$7,000 in a 401(k) account (Tr. 61–63). She pays her regular bills online or with a debit card. She believes the primary factor for the financial problems was the “crumbling” marriage, and she believes both she and her husband share the blame (Tr. 66).

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.

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.

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 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

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).

¹⁴ Executive Order 10865, § 7.

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

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 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. And the same evidence supports a conclusion of 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 of the mitigating conditions have been considered. In particular, MC 2—conditions largely beyond a person's control—has some potential application based

¹⁶ Revised Guidelines at 13.

¹⁷ DC 1 is “inability or unwillingness to satisfy debts.”

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

on Applicant's separation and her pending divorce. But Applicant has not made any progress in resolving the debts (except for the vacation network membership). Given the lack of forward progress, although she is in a difficult spot, Applicant has not acted responsibly under the circumstances.

Another potential mitigating condition is MC 4, which requires a person to initiate a good-faith effort to repay overdue creditors or otherwise resolve debts. Based on the record evidence, her efforts are not enough to qualify as a good-faith effort. 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. Her future plan to resolve her share of the marital debts through a debt-consolidation program sounds reasonable, but it is too soon to tell at this point as the divorce is still pending. Like her marriage, her financial situation is up in the air. This uncertainty makes it impossible to determine if Applicant will successfully resolve her financial problems as well as to determine the likelihood of continuation or recurrence of financial problems. Given these circumstances, MC 4 does not apply to Applicant's case.

Finally, MC 5 applies in Applicant's favor. She provided documentary evidence showing that the debt for the vacation network membership will be resolved (Exhibit A). On this basis, a favorable finding for SOR ¶ 1.i is appropriate.

On balance, Applicant did not present sufficient evidence to 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 whole-person concept was given due consideration and that analysis does not support a favorable decision. This case is decided against 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:	Against Applicant
Subparagraphs 1.a–1.h, 1.j:	Against Applicant
Subparagraph 1.i:	For Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Michael H. Leonard
Administrative Judge