



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-03566
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

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

November 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,¹ the Defense Office of Hearings and Appeals (DOHA) issued a statement of reasons (SOR) to Applicant on June 20, 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

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).

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 August 22, 2008. The hearing took place as scheduled on September 25, 2008. The transcript (Tr.) was received on October 2, 2008.

Findings of Fact

Under Guideline F, the SOR alleges 19 delinquent debts ranging from \$131 to \$82,735 for a total of about \$119,000. The largest of the debts is a student loan. He denied 18 of the 19 debts, except for the student loan debt. Based on the record evidence as a whole, the following facts are established by substantial evidence.

Applicant is a 43-year-old commercial designer. He has worked for his current employer since June 2005. His gross annual salary is about \$46,000. He married in 1989 and divorced in 2004. He has two children, both of whom live with their mother. He pays child support and he says he is current with this obligation. He earned an associate's degree in 1992 and is now working on a bachelor's degree in marketing, the cost of which is paid by his employer.

Applicant has a history of financial problems, which at the hearing he did not dispute. His history of financial problems is established by a 2007 credit report and a 2008 credit report (Exhibits 3 and 4). The largest debt is a student loan, which was placed with a collection agency, and as of April 11, 2008, the balance was \$82,735 (Exhibit 2 at 6). He attributes his financial problems to a bad marriage wherein his spouse ran up credit card bills and hid matters from him.

The status of the 19 debts alleged in the SOR is summarized in the following table.³

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 Exhibit A and his hearing testimony for a description of the debts and their status (Tr. 43-65).

Debts	Status
SOR ¶ 1.a—\$279 collection account.	Paid in August 2008.
SOR ¶ 1.b—\$131 collection account.	Unresolved.
SOR ¶ 1.c—\$1,283 charged-off account.	Made two payments of \$20.
SOR ¶ 1.d—\$983 charged-off account.	Made two payments of \$20.
SOR ¶ 1.e—\$2,192 charged-off account.	Made two payments of \$20.
SOR ¶ 1.f—\$492 charge-off account.	Settled for \$150 in September 2008.
SOR ¶ 1.g—\$403 charged-off account.	Made one payment of \$10.
SOR ¶ 1.h—\$406 charged-off account.	Disputed and deleted from credit report.
SOR ¶ 1.i—\$303 charged-off account.	Disputed and deleted from credit report.
SOR ¶ 1.j—\$6,750 collection account.	Unresolved.
SOR ¶ 1.k—\$997 collection account.	Unresolved.
SOR ¶ 1.l—\$1,503 collection account.	Unresolved.
SOR ¶ 1.m—\$1,258 collection account.	Disputed and deleted from credit report.
SOR ¶ 1.n—\$777 collection account.	Made two payments of \$10.
SOR ¶ 1.o—\$82,735 student loan.	Original loan amount was about \$20,000. Made \$553 payment in June 2008 and a \$150 payment in September 2008; working with Department of Education or collection agency or both in effort to rehabilitate the loan.
SOR ¶ 1.p—\$6,684 charged-off account.	Made one payment of \$50.
SOR ¶ 1.q—\$3,657 collection account.	Unresolved.
SOR ¶ 1.r—\$5,816 charged-off account.	Unresolved.
SOR ¶ 1.s—\$2,611 charged-off account.	Unresolved.

To sum up, two accounts are paid or settled, seven accounts have seen some payments, three accounts were disputed and deleted, and seven accounts are unresolved.

Applicant had about \$500 in a checking account and about \$200 in a savings account (Tr. 71). He has no other financial assets.

In July 2008, Applicant retained a firm to work toward removing and correcting the negative or adverse information from his credit reports (Exhibit A). Their efforts to date are reflected in the table above. In addition, he planned to take a course called “Transforming Your Finances” in October 2008 (Exhibit A).

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 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

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).

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.

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.

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.

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.

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

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

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; or

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

All the mitigating conditions have been considered, and except for MC 5, none apply in Applicant's favor.

MC 5 applies because he provided documentary evidence that he successfully disputed and deleted three accounts from his credit report. Otherwise, Applicant did not present sufficient evidence to justify applying any MC. In reaching this conclusion, I specifically considered the circumstance that his financial problems are likely due, in part, to his marriage that ended in divorce in 2004. But Applicant did not present sufficient evidence to show that he acted responsibly under the circumstances. Indeed, his dilatory actions in addressing his financial problems tend to undercut his reliance on his troubled marriage.

In addition, in reaching this conclusion, I specially considered the circumstance that Applicant contacted several of the creditors and made periodic payments to several as well, but this is little progress in light of the size of his indebtedness. His track record of repayment is skimpy, and coupled with his limited financial means, is not sufficient to establish a good-faith effort to repay or otherwise resolve debts.

To conclude, Applicant did not present sufficient evidence to explain, extenuate, or mitigate the security concerns. Applicant did not meet his ultimate burden of persuasion to obtain a favorable clearance decision. In reaching this conclusion, the whole-person concept¹⁹ (to include his constructive community involvement) was given due consideration and that analysis does not supports a favorable decision. Indeed, looking forward to the next 12 to 18 months, it is unlikely that he will successfully resolve his financial problems.²⁰ 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.g:	Against Applicant
Subparagraphs 1.h–1.i:	For Applicant
Subparagraphs 1.j–1.l:	Against Applicant
Subparagraph 1.m:	For Applicant
Subparagraphs 1.n–1.s:	Against Applicant

Conclusion

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

Michael H. Leonard
Administrative Judge

¹⁹ Revised Guidelines at 1–2 (listing nine factors to consider under the whole-person concept).

²⁰ Revised Guidelines at 2 (“the likelihood of continuation or recurrence”).