



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-03627
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Paul M. DeLaney, Esquire, Department Counsel
For Applicant: *Pro Se*

May 8, 2009

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, DoD Directive, and Revised Guidelines,¹ the Defense Office of Hearings and Appeals (DOHA) issued a statement of reasons (SOR) to Applicant on October 31, 2008. The SOR is equivalent to an administrative complaint and it details the factual basis for the

¹ This case is adjudicated under 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 also adjudicated 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. The Directive is pending revision or amendment. The Revised Guidelines apply here because the SOR is dated after the effective date.

action. The issues in this case fall under Guideline F for financial considerations based on a history of financial problems.

Applicant's Answer to the SOR was received by DOHA on February 17, 2009, and he elected a decision without a hearing. Accordingly, the case will be decided based on the written record in lieu of a hearing.

On March 16, 2009, the government submitted its written case consisting of all relevant and material information that could be adduced at a hearing. This so-called file of relevant material (FORM)² was mailed to Applicant and received by him on April 21, 2009. He replied to the FORM within the allowed 30-day period, and his reply consists of a one-page letter and a one-page attachment bearing the photocopies of two checks. Department counsel raised no objections, and so those matters are admitted as Exhibit A. The case was assigned to me on May 7, 2009.

Findings of Fact

Under Guideline F, the SOR alleges that Applicant owes six creditors the total sum of approximately \$14,471 in delinquent debt. His Answer to the SOR was mixed. He admitted the debts in SOR ¶¶ 1.a, 1.d, 1.e, and 1.f, and he included documentation to show he had paid the debts in 1.a and 1.f. Also, he stated that he was making \$100 monthly payments on the debt in SOR ¶ 1.e. He denied the allegations in SOR ¶¶ 1.b and 1.c.

Applicant is a 41-year-old network engineer. He has worked for his current employer since 2006. He completed a security-clearance application in October 2007 (Exhibit 4). This document shows he was self-employed in telecommunications from about August 2003 to December 2006, he worked as a technician for a communications company from February 1999 to August 2003, and he listed no period of unemployment. His first marriage ended in divorce in 1997 (Exhibit 6), and his second marriage ended in divorce in 2004 (Exhibit 4).

Applicant has a well-established history of financial problems dating back to his first marriage. Applicant incurred substantial debt as a result of the divorce. He filed for a Chapter 7 bankruptcy in about October 1998 and he received a discharge in about February 1999 (Exhibits 8 and 9). He estimates that he had about \$20,000 in liabilities (Exhibit 6).

The SOR does not allege the bankruptcy but it does allege six delinquent debts, each of which is discussed below. The debts alleged in the SOR are established by the information in multiple credit reports (Exhibits 7, 8, and 9).

² The government's brief includes several attachments referred to as items. They are referred to as exhibits herein.

SOR ¶ 1.a is for a \$63 collection account based on a returned check. It was paid in full in February 2009 (Exhibit A).

SOR ¶ 1.b is for a \$159 collection account based on a telephone account. In his response to the FORM, Applicant denied this allegation and claimed that he had a current account with the same telephone company (Exhibit A). He did not, however, provide any documentation (for example, an account statement) to support his claim.

SOR ¶ 1.c is for a \$911 collection account based on an account with a bank. In his response to the FORM, Applicant denied this allegation and claimed that he has a current account with the same bank (Exhibit A). He did not, however, provide any documentation to support his claim.

SOR ¶ 1.d is for a \$8,242 debt based on a repossession. In his response to the FORM, Applicant stated that he tried to contact the creditor and they said the account was sold or written off (Exhibit A). In his December 2007 background interview, Applicant explained the debt stemmed from the repossession of his 1999 Dodge truck purchased in about December 2004 with a monthly payment of \$550 (Exhibit 6). He fell behind on the payment schedule and the truck was repossessed. He stated that he had not been contacted regarding a balance owed and said he would contact them in an effort to arrange a repayment plan. He did not provide any documentation on this debt.

SOR ¶ 1.e is for a \$4,078 charged-off debt based on a bank loan. Reading the three credit reports and his interview together, this debt stems from a personal loan of about \$12,000 Applicant obtained from a bank to buy two snowmobiles and a trailer (Exhibits 6–9). In time, he fell behind on the payment schedule and the bank took collection action against Applicant via a lawsuit on the debt. The bank obtained a judgment against Applicant in the amount of \$7,696 in September 2007. He is paying the judgment off with \$100 monthly payments, and as of April 2008, the balance was \$7,530 (Exhibit 5–Attachment B). He did not provide any current documentation (from 2009) on this debt.

SOR ¶ 1.f is for a \$1,018 state tax lien that was filed against Applicant in about August 2005. It was paid in full in February 2009 (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.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

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.”).

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 (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

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).

¹³ Executive Order 10865, § 7.

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 or 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;

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;

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 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 4, which concerns initiating a good-faith effort to repay.

In summary, Applicant resolved the debts in SOR ¶¶ 1.a and 1.f, he disputes, without documentation, the debts in ¶¶ 1.b and 1.c, and he has not resolved the debts in ¶¶ 1.d and 1.e, which total approximately \$15,000 stemming from a repossession of a truck and a judgment taken on a bank loan. Given these circumstances, Applicant does not receive credit under MC 4 because his efforts are not sufficient. The vast majority of the debt remains unresolved and Applicant did not provide sufficient information to support his claims that he disputes two of the debts.

Also, MC 2 received due consideration based on Applicant's two divorces. But it does not apply because Applicant did not present sufficient evidence showing that he acted responsibly under the circumstances.

Under the whole-person concept, an administrative judge must evaluate a person's eligibility for a security clearance by considering the totality of the person's conduct and all the circumstances. An administrative judge should consider the nine adjudicative process factors listed in the Revised Guidelines as follows: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.¹⁸

After weighing the record evidence as a whole and giving it due consideration under the whole-person concept, Applicant did not present sufficient evidence to explain, extenuate, or mitigate the security concerns. In reaching this conclusion, I considered Applicant's well-established history of financial problems, to include his Chapter 7 bankruptcy, and further conclude that it is simply too soon to tell if Applicant will be able to put his financial house in good order. Applicant's evidence is not sufficient to overcome the security concerns. Applicant did not meet his ultimate burden

¹⁸ Revised Guidelines at 1–2.

of persuasion to obtain a favorable clearance 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.f:	Against Applicant

Conclusion

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

Michael H. Leonard
Administrative Judge