



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-06407
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert E. Coacher, Esquire, Department Counsel
For Applicant: *Pro Se*

July 24, 2009

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny 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 January 28, 2009. The SOR is equivalent to an administrative complaint and it details the factual basis for the action. The issues here fall under Guideline F for financial considerations.

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 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.

Applicant replied to the SOR on February 4, 2009, and he requested a hearing. The case was assigned to me on May 1, 2009. The hearing took place on June 2, 2009, during which testimony was taken and Exhibits 1–6 and A were admitted. The transcript (Tr.) was received on June 10, 2009. The record was kept open until June 16, 2009, to allow Applicant an opportunity to submit additional documentary evidence. He did so in a timely manner and that document is marked and admitted, without objections, as Applicant's Exhibit B. For the reasons discussed below, this case is decided for Applicant.

Findings of Fact

Applicant replied to the SOR by admitting all the allegations of indebtedness (nine delinquent debts ranging in amounts from \$171 to \$16,726 for a total of about \$46,817). Based on the record evidence as a whole, the following facts are established by substantial evidence.

Applicant is a 25-year-old employee of a federal contractor. He is a high-school graduate who has worked as an electronics engineer technician since November 2007. He is seeking to obtain a security clearance for the first time.

Applicant finished high school in 2002. Since then, his employment history has included jobs as an apprentice electrician, delivery driver, deck hand, and waiter, although his main occupation was as an apprentice electrician. He was employed as an apprentice electrician in August 2006 when he had a skateboarding accident that knocked him unconscious. Rescue personnel were called to the scene, and Applicant was transported by ambulance to an airfield where he was flown by helicopter to a hospital. He had regained consciousness, but was subject to tests at the hospital. He suffered no serious head injury and all tests were normal. He was released the same day. He had just started a new job a few months before the accident, and so he did not yet have medical insurance, but he did not miss any work due to the accident.

Applicant was unable to pay the uninsured medical bills stemming from his medical transportation and treatment. He also fell behind on his other debts. In about February 2007, he consulted a law firm to assist him in paying off the medical debts. He paid \$189 monthly for about 12 months, but he quit because he did not think this plan was showing sufficient progress.

Applicant retained the services of a bankruptcy lawyer in September 2008 (Exhibit 2). A Chapter 7 bankruptcy petition was filed in February 2009, and the bankruptcy court granted Applicant a discharge in May 2009 (Exhibits 6 and B). The schedules to the Chapter 7 petition list \$21,976 in total assets and \$93,728 in total debt. The Schedule F lists \$59,578 in unsecured creditors, to include approximately \$24,000 owed to seven medical creditors.

It appears all the debts at issue in the SOR were included in the Chapter 7 bankruptcy case. Five of the nine debts in the SOR were medical accounts stemming

from his skateboarding accident. Those five debts totaled about \$16,086, of which more than \$13,000 was based on the cost of the helicopter flight. Of the remaining four debts in the SOR, the largest is a \$16,726 debt owed to a bank for a deficiency on a 2003 Dodge Ram truck. Applicant bought the truck in 2006 (before the accident) for a friend who made the payments on the loan. The friend served three months in jail in 2007 and made no payments during that time. Applicant made no payments, and the truck was repossessed in about January 2008. The other large debt is a \$11,677 credit card account that went into default and then collection after Applicant incurred the medical bills.

Applicant's group manager believes that Applicant has "performed very well not only technically but in how he handled himself" (Tr. at 33). The group manager has taken an active interest in Applicant, and, in turn, Applicant sought out his assistance for this proceeding. The group manager has counseled Applicant on financial matters, explaining concepts such as debt, interest accruals, income, assets, savings, and payoff expectations (Exhibit A). The group manager analyzed Applicant's indebtedness and concluded that it spiked with the uninsured medical bills.

His gross income for 2008 was about \$48,000. He earns an hourly wage and usually earns a gross monthly income of about \$2,800, but that does not include overtime. He currently has no credit card debt, he has some savings, he participates in his company's 401(k) plan, and he is sharing living expenses with roommates. He now understands that it was foolish of him to sign loan paperwork for a friend, and he also understands the dangers of becoming financially overextended (Tr. at 68–69).

Policies

This section sets forth the general principles of law and policies that apply to an industrial security clearance case. To start, the only purpose of a security clearance decision is to decide if an applicant is suitable for access to classified information, and it is well established that no one has a right to a security clearance.²

A favorable decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.³ An unfavorable decision: (1) denies any application; (2) revokes any existing security clearance; and (3) prevents access to classified information at any level.⁴

² *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.").

³ Directive, ¶ 3.2.

⁴ Directive, ¶ 3.2.

As noted by the Supreme Court 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 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.⁶ The government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.⁷ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.⁸ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁹ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹⁰ The agency appellate authority has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.¹¹

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.¹² 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.

⁵ *Egan*, 484 U.S. at 531.

⁶ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

⁷ Directive, Enclosure 3, ¶ E3.1.14.

⁸ Directive, Enclosure 3, ¶ E3.1.15.

⁹ Directive, Enclosure 3, ¶ E3.1.15.

¹⁰ *Egan*, 484 U.S. at 531.

¹¹ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

¹² Executive Order 10865, § 7.

Analysis

Under Guideline F for financial considerations,¹³ 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.”¹⁴ 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 raises security concerns because it indicates inability or unwillingness to satisfy debts¹⁵ and a history of not meeting financial obligations¹⁶ within the meaning of Guideline F. The record evidence shows Applicant incurred more than \$45,000 of delinquent debt, which is a particularly large amount given his youthful age. Even setting aside the medical debts, there is still about \$30,000 in delinquent debt. And the Chapter 7 bankruptcy paperwork reveals still more debt. These facts and circumstances are more than sufficient to establish these two disqualifying conditions. And the same facts and circumstances suggest 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;

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

¹⁴ Revised Guidelines at p. 13.

¹⁵ DC 1 is “inability or unwillingness to satisfy debts.”

¹⁶ DC 3 is “a history of not meeting financial obligations.”

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 of the mitigating conditions have been considered and three apply in Applicant's favor. First, MC 2 applies because the uninsured medical debts were due to an unexpected medical emergency that was largely beyond Applicant's control. He acted responsibly under the circumstances by attempting to pay the debts through a payment plan. Second, MC 3 applies because Applicant, via the Chapter 7 bankruptcy proceeding, went through mandated financial counseling, and he obtained a discharge from legal liability for any debts included in the bankruptcy. Given these circumstances, there are clear indications that Applicant's financial problems are now resolved or are under control. Third, MC 4 applies because Applicant made a good-faith effort, albeit unsuccessful, to address his indebtedness via the repayment plan. His termination of the plan due to lack of progress does not negate his good faith by initiating the effort.

I also considered this case in light of the whole-person concept, which requires an administrative judge to evaluate a person's eligibility 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) the 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.¹⁷

Several of these factors apply in Applicant's favor. Factor 2 applies because the circumstances surrounding Applicant's financial problems show that the uninsured medical debts were the tipping point that caused his financial condition to deteriorate to the point where it overwhelmed him. Factor 4 applies because Applicant was young and inexperienced when he incurred the indebtedness. He is now more savvy and mature and better equipped to handle his financial responsibilities. And factors 8 and 9 apply because—with the Chapter 7 bankruptcy case completed—both the potential for

¹⁷ Revised Guidelines at pp. 1–2.

pressure, coercion, exploitation, or duress as well as the likelihood of continuation or recurrence of financial problems are low. At this time, Applicant's financial problems are no longer overwhelming, and he is not in the middle of financial turmoil. He is on the way to putting his financial house in good order. On balance, I am persuaded that Applicant's history of financial problems is a thing of the past and will not be an item of concern in the future.

To conclude, Applicant presented sufficient evidence to rebut, explain, extenuate, or mitigate the security concerns under Guideline F. Applicant met his ultimate burden of persuasion to obtain a favorable clearance decision. This case is decided for Applicant.

Formal Findings

The formal findings on the SOR allegations, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

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