



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



In the matter of: )  
 )  
----- ) ISCR Case No. 08-08474  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

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

July 29, 2009

**Decision**

LEONARD, Michael H., Administrative Judge:

This is a security clearance case in which 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,<sup>1</sup> the Defense Office of Hearings and Appeals (DOHA) issued a statement of reasons (SOR) to Applicant on December 5, 2008. The SOR is equivalent to a complaint and it details the factual basis for the action. The issues here fall under Guideline F for financial considerations.

---

<sup>1</sup> 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 December 22, 2008, and he requested a hearing. On February 6, 2009, the case was assigned to another judge who scheduled the hearing for March 23, 2009. The hearing was cancelled, and the case was reassigned to me on May 1, 2009. The hearing took place on June 3, 2009. The transcript (Tr.) was received on June 11, 2009. For the reasons discussed below, this case is decided against Applicant.

### Findings of Fact

Applicant replied to the SOR by admitting one of the four delinquent debts ranging in amounts from \$85 to \$19,880 for a total of about \$28,991. 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. He has a bachelor's degree in secondary education, and he has worked as an instructor for a defense contractor since February 2008. He has been continuously employed since at least April 2001. He is seeking to obtain a security clearance for the first time.

Applicant has a history of financial problems, which he attributes to a divorce (Tr. at 37). All four debts, as alleged in the SOR, are established by two credit reports (Exhibits 3 and 4). The status of the debts is summarized in the following table.

<b>Debts</b>	<b>Status</b>
SOR ¶ 1.a—\$8,306 deficiency balance stemming from an auto repossession.	Applicant admits the debt, estimates the current balance at \$9,375, and he has taken no action on the debt since the repossession in 2007. His plan is to address it when he settles his other financial matters (Tr. at 48).
SOR ¶ 1.b—\$720 collection account.	Paid (Exhibit B).
SOR ¶ 1.c—\$19,880 charged-off account stemming from an auto repossession.	Applicant disputes this debt. He maintains it is from an auto loan obtained by his then wife in June 2005, which ended in repossession in 2006. He denies signing the loan paperwork. Correspondence from the bank is addressed to his wife (Exhibit 2). A March 2008 credit report shows it was a joint installment account (Exhibit 4 at 15).
SOR ¶ 1.d—\$85 collection account.	Paid (Exhibit B).

Applicant married in March 2005, the couple separated after about six months, and they were only recently divorced in February 2009. His wife was about three

months pregnant with their son when they separated. His ex-wife has custody of the child, and Applicant is paying court-ordered child support at the rate of \$656 monthly. Also, the divorce degree ordered that “[e]ach party shall pay all debts in his or her name and shall further pay any and all debts in his or her name after the service of process in this matter dated December 28, 2005” (Exhibit A).

Applicant has a ten-year-old daughter from a previous relationship. He recently obtained custody of her after a custody dispute.

Applicant estimates the divorce and custody cases have cost him from \$10,000 to \$20,000. He is continuing to pay attorney’s fees with a balance due of about \$2,300.

His current annual salary is about \$65,000. He reports a positive cash flow of \$600 to \$800 monthly (Tr. at 46). He participates in his company’s 401(k) plan. Since the divorce is now resolved, his finances have improved to the point where he is now living comfortably.

## 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.

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

It is well established that no one has a right to a security clearance.<sup>4</sup> And 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.”<sup>5</sup> 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.

---

<sup>2</sup> Directive, ¶ 3.2.

<sup>3</sup> Directive, ¶ 3.2.

<sup>4</sup> *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 (10<sup>th</sup> 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.”).

<sup>5</sup> 484 U.S. at 531.

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>6</sup> The government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>7</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>8</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>9</sup> In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>10</sup> The agency appellate authority has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.<sup>11</sup>

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.<sup>12</sup> 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,<sup>13</sup> 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

---

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

<sup>7</sup> Directive, Enclosure 3, ¶ E3.1.14.

<sup>8</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>9</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>10</sup> *Egan*, 484 U.S. at 531.

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

<sup>12</sup> Executive Order 10865, § 7.

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

questions about an individual's reliability, trustworthiness, and ability to protect classified information."<sup>14</sup> Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information.

Applicant's history of financial problems raises security concerns because it indicates inability or unwillingness to satisfy debts<sup>15</sup> and a history of not meeting financial obligations<sup>16</sup> within the meaning of Guideline F. The record evidence shows Applicant incurred delinquent debts based in part on repossession of at least one auto, which shows a high degree of financial irresponsibility. These facts and circumstances are 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;

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.

---

<sup>14</sup> Revised Guidelines at p. 13.

<sup>15</sup> DC 1 is "inability or unwillingness to satisfy debts."

<sup>16</sup> DC 3 is "a history of not meeting financial obligations."

All of the mitigating conditions have been considered and three deserve discussion. First, MC 2 applies because Applicant's financial difficulties were due, in part, to expenses associated with the separation and divorce as well as the custody case involving his ten-year-old daughter. He acted responsibly under the circumstances by putting family first.

Second, MC 4 applies, in part, because Applicant made a good-faith effort by paying off two collection accounts. Such actions demonstrate good faith.

Third, MC 5 applies, in part, because Applicant may have a reasonable basis to dispute the \$19,880 charged-off account. Correspondence from the bank was addressed to his wife, which lends credibility to his claim that this is his wife's debt that she is responsible for under the terms of the divorce. He does not receive full credit, however, because a credit report suggests the debt was based on a joint account, the relevant paperwork he submitted is dated in 2006 and 2007, and the current status of the dispute is unknown.

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.<sup>17</sup>

Applicant is an educated and mature individual who should be able to handle his financial obligations without the difficulties he has experienced. At this time, his financial problems are not overwhelming, and he is not in the middle of financial turmoil. He has a good job and earns a decent salary. These circumstances weigh in his favor.

But Applicant has not displayed sufficient intensity to demonstrate that he is serious about cleaning up his financial house by resolving the two largest outstanding debts set forth in SOR ¶¶ 1.a and 1.c. He presented no paperwork on the \$8,306 deficiency balance stemming from an auto repossession. That is consistent with his testimony that he has taken no action on it since the repossession in 2007. And he does not have a realistic plan in place to address this debt in the near future. His paperwork on the \$19,880 charged-off account, which he disputes, is dated and does not report the current status. Since the dispute commenced in 2006 or 2007, it is reasonable to expect to see some evidence of progress. For these two debts, taken together, it appears to be a case of out-of-sight and out-of-mind. This suggests Applicant has a lackadaisical or

---

<sup>17</sup> Revised Guidelines at pp. 1–2.

apathetic attitude, which militates against a favorable decision. On balance, I am not 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 did not present sufficient evidence to rebut, explain, extenuate, or mitigate the security concerns under Guideline F. Applicant did not meet his ultimate burden of persuasion to obtain a favorable clearance decision. This case is decided against 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:	Against Applicant
Subparagraphs 1.a and 1.c:	Against Applicant
Subparagraphs 1.b and 1.d:	For 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