



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 08-09084
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tom Coale, Esq., Department Counsel

For Applicant: *Pro Se*

August 12, 2009

**Decision**

LEONARD, Michael H., Administrative Judge:

This is a security clearance case in which Applicant contests the Defense Department's intent to deny or revoke his eligibility for an industrial security clearance. The action is based on Applicant's history of financial problems—more than \$12,000 in delinquent debts, to include student loans that went into default and are now in collection. The record does not contain sufficient evidence to explain, extenuate, or mitigate the security concerns stemming from his history of financial problems. Accordingly, as explained in further detail below, this case is decided against Applicant.

## Statement of the Case

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 March 18, 2009. The SOR is equivalent to a complaint and it details the factual basis for the action. The SOR alleged security concerns under Guideline F for financial considerations, and it recommended submitting Applicant's case to an administrative judge for a determination to deny or revoke a security clearance.

Applicant replied to the SOR on April 6, 2009, and he did not request a hearing. Accordingly, the case will be decided based on the written record in lieu of a hearing.

On April 23, 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)<sup>2</sup> was mailed to Applicant and received by him on May 21, 2009. He did not respond within the allowed 30-day period. The case was assigned to me on August 3, 2009.

## Findings of Fact

Under Guideline F, the SOR alleged eight delinquent debts ranging from \$47 to \$10,305 for a total of approximately \$26,105; three appear to be student loans for more than \$20,000. His Answer to the SOR was mixed. He admitted the debts except for those alleged in SOR ¶¶ 1.c, 1.d, and 1.g, which he denied. And he denied SOR ¶ 1.h, suggesting this student loan duplicated the student loans in ¶¶ 1.e. and 1.f. He did not submit any attachments or enclosures to his Answer. His admissions are incorporated herein as findings of fact. Based on the record as a whole, the following facts are established by substantial evidence.

Applicant is a 47-year-old employee of a federal contractor. He completed a security-clearance application in May 2008 (Exhibit 4). It appears that he is seeking a security clearance for the first time (Exhibit 4 at p. 17).

His security-clearance application shows a sporadic employment history (Exhibit 4 at pp. 9–12). He has worked in his current job as a material handler since April 2008.

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<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.

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

But he has had several periods of unemployment as follows: (1) from October 2007 to April 2008; (2) from August 2006 to April 2007; (3) from January 2005 to September 2005; and (4) from March 2001 to January 2003.

Applicant's history of financial problems is established by information contained in credit reports, to include a credit report Applicant submitted in response to written interrogatories (Exhibits 5 and 7). Applicant attributes his financial problems to unemployment and garnishments for child-support payments (Exhibit 6 at p. 4). The individual debts, as alleged in the SOR, are addressed below.

Applicant admits an unpaid \$47 collection account alleged in SOR ¶ 1.a. It is also established by Applicant's credit report, which shows it was past due as of August 2008 (Exhibit 7 at p. 6).

Applicant admits an unpaid \$305 judgment alleged in SOR ¶ 1.b. It stems from unpaid rent when he was unemployed (Exhibit 6 at p. 3).

Applicant denies an unpaid \$1,251 collection account alleged in SOR ¶ 1.c. Both credit reports describe this account as a paid, closed collection account (Exhibits 5 and 7).

Applicant denies an unpaid \$162 collection account alleged in SOR ¶ 1.d. It is established by Applicant's credit report, which shows it was past due as of June 2008 (Exhibit 7 at p. 7).

Applicant admits an unpaid \$4,546 student loan alleged in SOR ¶ 1.e. It appears to be a federal student loan that went into default. Applicant's credit report shows it went into collection as of February 2007, and was \$4,546 past due as of October 2008 (Exhibit 7 at p. 8).

Applicant admits an unpaid \$7,391 student loan alleged in SOR ¶ 1.f. It appears to be a federal student loan that went into default. Applicant's credit report shows it went into collection as of February 2007, and it was \$7,391 past due as of October 2008 (Exhibit 7 at p. 8).

Applicant denies an unpaid \$2,098 collection account alleged in SOR ¶ 1.g. Applicant indicated, in a personal financial statement, that he is disputing this debt (Exhibit 7 at p. 4). It is not established by the credit reports. The government's credit report shows no balance on this account (Exhibit 5 at p. 4). Applicant's credit report shows no balance as well (Exhibit 7 at p. 7).

Applicant denies an unpaid \$10,305 student loan alleged in SOR ¶ 1.h, because he believes it is not a separate debt and duplicates the student loans in ¶¶ 1.e and 1.f. The government's credit report shows no balance on this account and describes it as closed (Exhibit 5 at p. 4). Applicant's credit report shows a balance of \$0 as of October 2006 (Exhibit 7 at pp. 8–9).

For the student loans, Applicant indicates he is making \$130 monthly payments, but time did not permit him to obtain a record of payments or an account statement (Exhibit 7 at pp. 3 and 4).

In addition to the derogatory information, Applicant's credit report shows a student loan account in good standing (Exhibit 7 at p. 9). The account was opened in 1996, had a high credit limit or original amount of \$6,897, and the status is described as paid, closed, and never late.

## 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>3</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>4</sup>

It is well-established law that no one has a right to a security clearance.<sup>5</sup> 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>6</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.

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>7</sup> The government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>8</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate

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<sup>3</sup> Directive, ¶ 3.2.

<sup>4</sup> Directive, ¶ 3.2.

<sup>5</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>6</sup> 484 U.S. at 531.

<sup>7</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>8</sup> Directive, Enclosure 3, ¶ E3.1.14.

facts that have been admitted or proven.<sup>9</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>10</sup> In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>11</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>12</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 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>13</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

### **1. *The record does not contain sufficient evidence to explain, extenuate, or mitigate Applicant's history of financial problems.***

Under Guideline F for financial considerations,<sup>14</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 questions about an individual's reliability, trustworthiness, and ability to protect classified information."<sup>15</sup> Similarly, an individual who is financially irresponsible may also be

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

<sup>10</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>11</sup> *Egan*, 484 U.S. at 531.

<sup>12</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

<sup>13</sup> Executive Order 10865, § 7.

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

<sup>15</sup> Revised Guidelines at p. 13.

irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information.

The record contains substantial evidence to establish five of the eight delinquent debts alleged in the SOR. But three debts are found in Applicant's favor. The unpaid \$1,215 collection account alleged in SOR ¶ 1.c is paid; the unpaid \$2,098 collection account in ¶ 1.g is not established by the credit reports; and the unpaid \$10,305 student loan in ¶ 1.h is not established as a separate account that Applicant currently owes. The other five debts, to include two student loans, amount to \$12,451 in delinquent debt, which 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 debts<sup>16</sup> and a history of not meeting financial obligations<sup>17</sup> 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;

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.

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<sup>16</sup> DC 1 is "inability or unwillingness to satisfy debts."

<sup>17</sup> DC 3 is "a history of not meeting financial obligations."

All the mitigating conditions have been considered and the most pertinent here is MC 2, due to Applicant's four periods of unemployment. MC 2 does not apply, however, because the record does not contain sufficient evidence to show if he acted responsibly under the circumstances. This mitigating condition, like the others, does not apply in his favor.

In summary, Applicant has more than \$12,000 in delinquent debt. He did not submit adequate documentation to show that (1) he has a realistic plan to address his financial problems and (2) he has taken significant actions to implement the plan. The student loans are particularly troubling, given the nature of the debt and the relative ease that documentation (repayment agreements, account statements, etc.) should be available from the creditor.

**2. *The whole-person concept does not support a favorable decision.***

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 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>18</sup>

After weighing the record as a whole and giving it due consideration under the nine-part whole-person concept, I conclude that Applicant did not present sufficient evidence to explain, extenuate, or mitigate the security concerns. Given the available information, 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 of persuasion to obtain a favorable clearance decision. This case is decided against Applicant.

**Formal Findings**

The formal findings 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.b:	Against Applicant
Subparagraph 1.c:	For Applicant

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<sup>18</sup> Revised Guidelines at pp. 1–2.

Subparagraphs 1.d–1.f:  
Subparagraphs 1.g–1.h:

Against Applicant  
For Applicant

### **Conclusion**

In light of the record as a whole, 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