



ISCR Case No. 08-10976

Decision

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (the Agency) issued a statement of reasons (SOR) to Applicant on April 22, 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. The SOR also recommended submitting the case to an administrative judge for a determination to deny or revoke Applicant's security clearance.

Applicant answered the SOR on May 1, 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 June 29, 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 July 16, 2009. He did not respond within the allowed 30-day period. The case was assigned to me on September 4, 2009.

Findings of Fact

Under Guideline F, the SOR alleged 13 delinquent debts ranging in amounts from \$162 to \$7,492 for a total of about \$20,000. Applicant's answers to the SOR were mixed and are set forth below. Based on the record as a whole, the following facts are established by substantial evidence.

Applicant is a 31-year-old security officer. He has held this job since April 2008. He married in 2004, and he and his wife are expecting their first child. His employment history includes military service during 1996–2003, when he served on active duty with the U.S. Coast Guard.

Applicant is seeking to obtain an industrial security clearance for the first time. To this end, he completed a security-clearance application in April 2008, and he reported ten accounts in response to two questions about financial delinquencies.³ In total, he reported about \$10,000 in delinquent debts.

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, because the SOR was issued after September 1, 2006, the revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (Revised Guidelines) approved by the President on December 29, 2005, then made effective within the Defense Department on September 1, 2006, apply to this case. They supersede or replace the guidelines published in Enclosure 2 to the Directive.

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

³ Exhibit 4.

Credit reports from 2008 and 2009 establish (1) the debts alleged in the SOR, and (2) that Applicant has a history of financial problems.⁴ For example, the trade section of the 2008 credit report has 27 accounts of which 14 are described as derogatory in some way (in collection, past due, etc.).⁵ The individual debts, as alleged in the SOR, are addressed below.

Applicant denies an unpaid \$296 charged-off account alleged in SOR ¶ 1.a. He contends the account was settled. In response to the Agency's interrogatories, Applicant presented (1) a settlement offer from a law firm for \$445 payable by January 16, 2009, (2) the name of the law firm, and (3) a named point-of-contact with telephone number as proof of payment.⁶ Given these circumstances, coupled with the relatively low amount at issue, this debt is resolved.

Applicant admits an unpaid \$1,422 collection account alleged in SOR ¶ 1.b. In response to the SOR, Applicant presented a settlement offer from a law firm, which agreed to settle the account for \$710 in three payments starting in June 2009.⁷ Applicant did not submit any other documentary proof for this debt. Given these circumstances, this debt is unresolved.

Applicant denies an unpaid \$7,492 account charged-off account alleged in SOR ¶ 1.c. He presented documentary proof that he settled this account for \$6,000 in 2004.⁸

Applicant admits an unpaid \$285 collection account alleged in SOR ¶ 1.d. This debt is unresolved.

Applicant admits an unpaid \$1,157 collection account alleged in SOR ¶ 1.e. He believes this is the same account as that alleged in SOR ¶ 1.i, which alleges the original creditor for the amount of \$1,156. This debt is unresolved, and it will not be discussed separately as ¶ 1.i.

Applicant admits a past-due account in the amount of \$1,225 for an auto loan alleged in SOR ¶ 1.f. In his Answer, Applicant indicated he would bring the loan current by June 2009, but did not present any documentary proof of his actions. Given these circumstances, this past-due account is unresolved.

Applicant admits an unpaid \$762 charged-off account alleged in SOR ¶ 1.g. In his Answer, Applicant stated he had received an offer to settle the account for \$500, but

⁴ Exhibits 6 and 7.

⁵ Exhibit 7.

⁶ Exhibit 5.

⁷ Exhibit 3.

⁸ Exhibits 3 and 5.

he has not presented any other evidence. Given these circumstances, this debt is unresolved.

Applicant admits an unpaid \$2,537 charged-off account alleged in SOR ¶ 1.h. This debt is unresolved.

Applicant admits an unpaid \$259 collection account alleged in SOR ¶ 1.i. In his Answer and in his response to the Agency's interrogatories, Applicant explained that he entered into a repayment plan or agreement with the collection agency in January 2009. He made monthly payments and expected to make a final payment in June 2009. Given these circumstances, coupled with the relatively low amount, this debt is resolved.

Applicant denies an unpaid \$162 collection account alleged in SOR ¶ 1.j. In response to the Agency's interrogatories, Applicant explained that he settled this debt in 2009 by making monthly payments in January, February, March, and April, but has not received written confirmation.⁹ Given these circumstances, coupled with the relatively low amount at issue, this debt is resolved.

Applicant admits an unpaid \$797 collection account alleged in SOR ¶ 1.k. This debt is unresolved.

Applicant admits an unpaid \$2,893 medical account that was placed for collection. Applicant has attempted over the years to have this paid through his wife's health-insurance provider without success. He is now trying to settle the account with the collection agency. This debt remains unresolved.

In his January 2009 response to interrogatories, Applicant attributed his financial difficulties to using credit cards due to a combination of factors: (1) a move to another state in 2004, followed by his marriage, followed by a brief period of unemployment, followed by a period of underemployment when he earned \$7 per hour; (2) a new job as a private investigator in 2005 when he had to pay for fuel expenses; (3) another job as a private investigator in 2006 with better pay but the same fuel expenses; (4) his current job beginning in 2008, which was a part-time position for the first three months, but has been a full-time position since July 2008; and (5) the loss of a roommate/tenant, which increased the monthly rental payment.¹⁰ Applicant believes he and his wife are now in a better financial position, he knows he owes the money, and he wants to repay his debts.

⁹ Exhibit 5.

¹⁰ Exhibit 5.

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 clearance decision is to decide if an applicant is suitable for access to classified information.

It is well-established law that no one has a right to a security clearance.¹¹ 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.”¹² 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.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.¹³ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹⁴

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁵ The government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁶ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁷ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁸ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹⁹ The agency appellate authority has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.²⁰

¹¹ *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) (no right to a security clearance).

¹² 484 U.S. at 531.

¹³ Directive, ¶ 3.2.

¹⁴ Directive, ¶ 3.2.

¹⁵ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁶ Directive, Enclosure 3, ¶ E3.1.14.

¹⁷ Directive, Enclosure 3, ¶ E3.1.15.

¹⁸ Directive, Enclosure 3, ¶ E3.1.15.

¹⁹ *Egan*, 484 U.S. at 531.

²⁰ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

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.²¹ Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

Analysis

Under Guideline F for financial considerations,²² the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive indebtedness, financial problems or difficulties, or financial irresponsibility. A security concern typically exists due to significant unpaid debts. The overall concern under Guideline F is that:

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.²³

Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information.

To summarize, as set forth in the findings of fact, Applicant resolved four debts and eight debts are unresolved for a total of about \$11,000. These facts and circumstances raise concerns because it indicates inability or unwillingness to satisfy debts²⁴ and a history of not meeting financial obligations²⁵ within the meaning of

²¹ Executive Order 10865, § 7.

²² Revised Guidelines, ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

²³ Revised Guidelines, ¶ 18.

²⁴ Revised Guidelines, ¶ 19(a).

²⁵ Revised Guidelines, ¶ 19(c).

Guideline F. These facts and circumstances are more than sufficient to establish the two disqualifying conditions noted above, and it suggests financial irresponsibility as well.

The guideline also provides that certain conditions may mitigate security concerns as follows:²⁶

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;

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;

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;

The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

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

The affluence resulted from a legal source of income.

All of the mitigating conditions have been considered and none, either individually or in combination, are sufficient to mitigate and overcome the security concerns. Applicant's financial problems are longstanding going back to about 2004–2005. They are not minor, and they are ongoing and unresolved. He did not present evidence of a realistic plan in place to address his remaining delinquent indebtedness and meet his current financial obligations. The combination of factors Applicant points to as an explanation for his financial problems are not so unusual or extraordinary to qualify as circumstances largely beyond his control.

He is entitled to some credit in mitigation, however, for his good-faith efforts in resolving four debts. This is a good first step in the right direction. But more than half of the indebtedness is unresolved, and it appears it will remain so for some time. Looking forward, it is too soon to tell if Applicant will repay, settle, or otherwise resolve his outstanding delinquent debts in a reasonable time and then continue to be a financially-

²⁶ Revised Guidelines, ¶ 20 (a) – (f) (setting forth six mitigating conditions).

responsible person. These circumstances are plainly contrary to the clearly-consistent standard I am required to apply. Accordingly, Guideline F is decided against Applicant. In reaching this conclusion, I gave due consideration to the nine-factor whole-person concept.²⁷

To conclude, Applicant did not present sufficient evidence to 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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d–1.h:	Against Applicant
Subparagraphs 1.i–1.j:	For Applicant
Subparagraphs 1.k, 1.l, 1.m:	Against Applicant

Conclusion

In light of the record as a whole, 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

²⁷ Revised Guidelines, ¶ 2(a)(1) – (9).