



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-07883
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Stephanie C. Hess, Esquire, Department Counsel
For Applicant: *Pro Se*

January 9, 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 June 9, 2008. The SOR is

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. The Revised Guidelines apply here because the SOR is dated after the effective date.

equivalent to an administrative complaint and it details the factual basis for the action. The issues in this case fall under Guideline F for financial considerations, Guideline E for personal conduct, and Guideline J for criminal conduct. The allegations under the three guidelines all center around Applicant's indebtedness.

Applicant's response to the SOR was received by DOHA on July 3, 2008, and he requested a hearing. It took place as scheduled pursuant to written notice on November 19, 2008. The transcript (Tr.) was received November 26, 2008.

The record was left open until December 3, 2008, to allow Applicant an opportunity to submit additional documentary evidence. He did so in a timely manner and those matters (as described in Applicant's cover letter) are admitted, without objections, as Exhibit B. In addition, he submitted two letters concerning debts not alleged in the SOR, but which he has successfully resolved. Those documents are admitted, without objections, as Exhibit C.

Applicant submitted additional documentary evidence, which was mailed on or about December 18, 2008. Although past the deadline, department counsel had no objections. Those matters (as described in Applicant's cover letter) are admitted as Exhibit D. For the reasons discussed below, this case is decided against Applicant.

Findings of Fact

Under Guideline F, the SOR alleged that Applicant owes nine creditors the total sum of approximately \$70,000 in delinquent debt. Under Guideline E, the SOR alleged that Applicant gave deliberately false answers in response to two questions about his financial record when he completed a security-clearance application. Under Guideline J, the SOR cross-alleged the falsification allegations as criminal conduct in violation of Title 18 U.S.C. 1001 (making a false statement within the jurisdiction of a federal agency). In his Answer to the SOR, Applicant admitted the debts except for the debt alleged in SOR ¶ 1.e, to which he claimed it was included in the debt alleged in ¶ 1.f. He denied the falsification allegations and the related criminal conduct allegation. Based on the record evidence as a whole, the following facts are established by substantial evidence.

Applicant is a 53-year-old employee of a federal contractor. He has been employed as a field service representative working in communications since January 2007. His annual salary is about \$49,000. He has been married since 1981. He and his wife have two children, ages 18 and 16. His wife has been unemployed for various reasons, including medical, since about 2003. She is now seeking employment.

His employment history includes about 23 years of military service in the U.S. Army (Exhibit B—DD Forms 214). He first served as an enlisted soldier from 1976 to 1991 and he reached the grade of sergeant first class. He then served as a warrant officer from 1991 to 1999 when he retired at the grade of chief warrant officer two. He

worked in communications and he held a security clearance, to include a top-secret clearance (Exhibit B–DA Form 873).

Applicant has worked for federal contractors since retiring from the Army in October 1999. He worked as field engineer at different locations, to include overseas, from January 2000 to January 2006. He was then unemployed until he started his current employment in January 2007.

He completed a security-clearance application in February 2007 (Exhibit 1). He was required to answer various questions about his background, to include his financial record. He denied having been over 180 days delinquent on any debts during the last seven years in response to Question 28a. Likewise, he denied that he was currently over 90 days delinquent on any debts in response to Question 28b. Applicant did not report any delinquencies because he was unaware of any, as his wife had primary responsibility for bill paying and household financial matters. In a written statement, his wife admitted overspending and failing to inform him of their delinquent accounts (Exhibit A).²

Applicant has a history of financial problems. The delinquent debts alleged in the SOR are established by Applicant’s admissions and the admitted evidence (Exhibits 2, 3, 4, and 5). To date, Applicant has not paid-in-full, settled, or otherwise resolved any of the alleged debts. But he and his wife were successful in establishing repayment plans for many of the debts. In addition, they paid-in-full one debt not alleged in the SOR, and they successfully disputed another debt not alleged in the SOR (Exhibit C).

The status of the nine debts in the SOR is summarized in the following table.³

<i>Debts</i>	<i>Status</i>
SOR ¶ 1.a–\$7,633 collection account.	In repayment plan since July 2008 with monthly payments of \$250 (Exhibit A, Tab A). Balance of \$6,563 as of Dec. 2008 (Exhibit D, Tab 2).
SOR ¶ 1.b–\$13,782 collection account.	In repayment plan with law firm since Sep. 2008 with \$200 monthly payments (Exhibit A, Tab F). Judgment obtained but not yet executed provided payments are made. Balance of \$13,057 as of Nov. 2008 (Exhibit D, Tab 2).

² Based on these findings, I conclude that Applicant did not give deliberately false answers. Accordingly, the personal conduct and criminal conduct allegations are decided in Applicant’s favor and will not be discussed further.

³ This summary is based on Applicant’s Exhibits A, B, and D, and his hearing testimony.

SOR ¶ 1.c—\$9,224 collection account.	In repayment plan with law firm since Sep. 2008 with \$200 monthly payments (Exhibit A, Tab G). Balance of \$7,642 as of Nov. 2008 (Exhibit D, Tab 3).
SOR ¶ 1.d—\$17,957 charged-off account.	In repayment plan since Jul. 2008 with \$200 monthly payments (Exhibit A, Tab H). Balance of \$22,256 as of Dec. 2008 (Exhibit D, Tab 2).
SOR ¶ 1.e—\$799 charged-off account.	Included in debt (same creditor) alleged in SOR ¶ 1.f.
SOR ¶ 1.f—\$10,364 collection account.	In repayment plan since Sep. 2008 with \$200 monthly payments (Exhibit A, Tab C). Balance of \$9,764 as of Dec. 2008 (Exhibit D, Tab 3).
SOR ¶ 1.g—\$4,024 delinquent account.	Unresolved; searching for creditor (Exhibit A, Tab D; Exhibit D, Tab 5).
SOR ¶ 1.h—\$3,353 delinquent account.	In repayment plan since Aug. 2008 with \$100 monthly payments (Exhibit A, Tab I). Balance of \$3,029 as of Dec. 2008 (Exhibit D, Tab 4).
SOR ¶ 1.i—\$2,930 delinquent account.	In repayment plan since Jul. 2008 with \$75 monthly payments (Exhibit A, Tab J). Brought current as a credit card account with a balance of \$3,053 as of Nov. 2008 (Exhibit A, Tab J; Exhibit D, Tab 4).

To sum up, six accounts are in repayment plans, one account is now current, one account is included in another, and one account is unresolved.

In addition to the debts in the SOR, Applicant presented evidence of two other delinquent accounts. The first delinquency is a past-due account owed to the federal government (the Army & Air Force Exchange Service or AAFES) in the amount of \$7,857 with a demand for a minimum monthly payment of \$654 (Exhibit A, Tab L). Applicant was unable to meet that demand and responded with a monthly payment of \$50 in November 2008, which is in addition to a monthly payment of \$77 via deduction or offset from his retired pay. As of December 2008, the balance was \$7,887 (Exhibit D, Tab 3).

The second delinquency is a collection account with a balance of \$11,638 as of October 2008 (Exhibit A, Tab K). The creditor offered Applicant a 40% discount to settle by making a lump-sum payment. Unable to do so, Applicant responded by agreeing to

make \$100 monthly payments. His most recent payment was on November 28, 2008 (Exhibit D, Tab 3).

Applicant receives retired pay of \$2,496 monthly (gross), which is nearly \$30,000 annually (Exhibit A—retiree account statement). Review of the account statement shows, however, that Applicant takes home very little. The September 2008 account statement shows a taxable income of \$1,903, multiple allotments for \$1,665, and a net pay of \$17.41.

Applicant and his wife sold a home in about January 2008 (Tr. 67–68). They made a profit of about \$20,000. Applicant’s wife gave some of the money to her parents, and Applicant and his wife used some of it to pay bills and debts. About \$5,000 or \$6,000 remained after doing so. Now, Applicant estimates having about \$8,000 in the bank, but no other financial assets other than personal property.

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.⁴ 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 they must, on the side of denials.”⁵ A favorable decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.⁶ 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.⁷ 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.⁸ The government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.⁹ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate

⁴ *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.”).

⁵ *Egan*, 484 U.S. at 531.

⁶ Directive, ¶ 3.2.

⁷ Directive, ¶ 3.2.

⁸ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

⁹ Directive, Enclosure 3, ¶ E3.1.14.

facts that have been admitted or proven.¹⁰ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹¹ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹² The agency appellate authority has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.¹³

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.¹⁴ 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,¹⁵ 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."¹⁶ 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

¹⁰ Directive, Enclosure 3, ¶ E3.1.15.

¹¹ Directive, Enclosure 3, ¶ E3.1.15.

¹² *Egan*, 484 U.S. at 531.

¹³ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

¹⁴ Executive Order 10865, § 7.

¹⁵ Revised Guidelines at 13–14 (setting forth the security concern and the disqualifying and mitigating conditions).

¹⁶ Revised Guidelines at 13.

indicates inability (not unwillingness) to satisfy debts¹⁷ and a history of not meeting financial obligations¹⁸ 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.

All the mitigating conditions have been considered and two justify discussion. The first is MC 2, which concerns events or circumstances largely beyond a person's control. The second is MC 4, which concerns initiating a good-faith effort to repay. Each is discussed below.

Applicant receives credit in mitigation under MC 2 because his financial problems resulted from events or circumstances largely beyond his control. The primary events or circumstances were as follows: (1) his wife's unemployment since 2003; (2) his unemployment in 2006; and (3) his wife's overspending and withholding of information about their finances. Taken together, these events or circumstances had a snowball or cumulative effect, the consequences of which Applicant is still experiencing.

¹⁷ DC 1 is "inability or unwillingness to satisfy debts."

¹⁸ DC 3 is "a history of not meeting financial obligations."

In addition, Applicant has acted responsibly under the circumstances. He returned to full-time employment in January 2007, and, once being fully aware of the situation, has worked with his wife to address his indebtedness. Given the particular facts of this case, Applicant has acted responsibly under difficult circumstances.

Applicant also receives credit under MC 4 due to his efforts to repay creditors as detailed in the table above. His actions, although at the beginning stages, are sufficient to qualify as initiating a good-faith effort within the meaning of the guideline.

To sum up under the whole-person concept,¹⁹ this case presents both disqualifying and mitigating circumstances, which requires thoughtful balancing. Applicant is in a difficult spot facing a mountain of debt. The six delinquent accounts in repayment plans plus the two other delinquent accounts (not alleged in the SOR) amount to approximately \$81,836 in delinquent debt. He has a daunting task ahead of him with limited financial means and a spouse with a history of overspending. Although he presented documentary evidence of his efforts to resolve his indebtedness, he did not present sufficient evidence to overcome the security concerns. His efforts to date are a good start, but he has made little progress in light of the size of his indebtedness. His track record of repayment at this point is skimpy and not sufficient to overcome the security concerns.

To conclude, Applicant did not present sufficient evidence to explain, extenuate, or mitigate the security concerns. Applicant did not meet his ultimate burden of persuasion to obtain a favorable clearance decision. In reaching this conclusion, the whole-person concept (to include his many years of honorable military service) was given due consideration and that analysis does not support a favorable decision. Indeed, looking forward to the next 12 to 24 months, it is highly unlikely that he will successfully resolve his financial problems.²⁰ 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.i:	Against Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraphs 2.a–2.b:	For Applicant
Paragraph 3, Guideline J:	For Applicant
Subparagraph 3.a:	For Applicant

¹⁹ Revised Guidelines at 1–2 (setting forth nine factors to consider).

²⁰ Revised Guidelines at 2 (“the likelihood of continuation or recurrence”).

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