



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 07-08740
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: D. Michael Lyles, Esquire, Department Counsel  
For Applicant: *Pro Se*

April 10, 2008

**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 and DoD Directive,<sup>1</sup> the Defense Office of Hearings and Appeals (DOHA) issued a statement of reasons (SOR) to Applicant on September 28, 2007. The SOR is 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 based on a history of financial problems. For the reasons discussed below, this case is decided against Applicant.

In addition to the Executive Order and Directive, this case is brought 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

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<sup>1</sup> 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).

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.<sup>2</sup> The Directive is pending revision or amendment. The Revised Guidelines apply here because the SOR is dated after the effective date.

Applicant replied to the SOR on October 21, 2007, and requested a hearing. The case was assigned to me on January 8, 2008. The hearing took place as scheduled on March 11, 2008, and the transcript (Tr.) was received on March 19, 2008.

The record was left open until March 28, 2008, to provide Applicant an opportunity to present documentary evidence (Tr. 75–81). No such matters were received.

### **Findings of Fact**

Under Guideline F, the SOR alleges 12 delinquent debts (§ 1.a–§ 1.l) ranging from \$43 to \$7,326 for about \$17,000 in total. He admitted all the debts, except § 1.c, in his response to the SOR. Based on the record evidence as a whole, the following facts are established by substantial evidence.

Applicant is a 30-year-old field logistician for a company engaged in defense contracting. He has worked for this company since about June 2006, when he was discharged from the Army. He served about ten years as a unit supply specialist until he was discharged due to disability (back problems). He received an honorable discharge.

His annual salary is about \$62,000, a little less now because he is no longer working at a remote location where he earned a higher salary. He is not married and has no children. It appears his financial problems started when he was in the Army and carried over to the present.

Applicant's history of financial problems is well documented (Exhibits 2, 3, 4, and 5). For example, a July 2006 credit report shows more than a dozen accounts listed in the trade section as having some sort of adverse information (e.g., past due, bad debt placed for collection, assigned to attorney/collection agency, etc.) (Exhibit 3). Likewise, the report has 11 accounts listed in the collections section. Two credit reports from 2007 further confirm Applicant's financial problems (Exhibits 4 and 5).

The delinquent debts in the SOR are established by Applicant's admissions and the admitted documentary evidence. With one exception noted below, he has not paid,

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<sup>2</sup> See Memorandum from the Under Secretary of Defense for Intelligence, dated August 30, 2006, Subject: Implementation of Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (December 29, 2005).

settled, or resolved any of the debts in the SOR. The status of his delinquent debts, as alleged in the SOR, is summarized in the following table.<sup>3</sup>

<b><i>Debt Description</i></b>	<b><i>Status</i></b>
SOR ¶ 1.a—collection account for \$450.	Disputes amount owed; provided no documentary evidence.
SOR ¶ 1.b—collection account for \$1,397.	Claims waiting for proposed settlement letter; provided no documentary evidence.
SOR ¶ 1.c—charged-off account for \$446.	Denies. Same creditor as SOR ¶ 1.i. Claims one account is paid and the other does not exist; provided no documentary evidence.
SOR ¶ 1.d—charged-off account for \$859.	Claims he paid it; provided no documentary evidence.
SOR ¶ 1.e—collection account for \$359.	Claims he paid it; provided no documentary evidence.
SOR ¶ 1.f—charged-off account for \$4,118.	Claims he is paying \$270 monthly; provided no documentary evidence.
SOR ¶ 1.g—charged-off account for \$576.	Disputes liability; provided no documentary evidence.
SOR ¶ 1.h—charged-off account for \$7,326 stemming from auto repossession.	Claims waiting for proposed settlement letter; provided no documentary evidence.
SOR ¶ 1.i—charged-off account for \$253.	Same creditor as SOR ¶ 1.c.
SOR ¶ 1.j—collection account for \$43.	Unpaid. Claims tried to pay it, but unsuccessful; provided no documentary evidence.
SOR ¶ 1.k—delinquent account for \$1,379 stemming from auto repossession.	Claims tried to pay it, but unsuccessful; provided no documentary evidence.
SOR ¶ 1.l—collection account for \$111.	Paid off with \$119 payment in Sep. 2007 (Exhibit 2 at p. 6).

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<sup>3</sup> See Applicant's testimony at Tr. 33–47.

In June 2006, in connection with his discharge, the Army paid Applicant \$40,368 for disability severance pay (Exhibit 2–DD Form 214). He believes he received about \$30,000 after deductions. He was unable to provide a reasonable, detailed explanation accounting for the \$30,000 (Tr. 66-72).

He estimates having about \$2,300 in a checking account and about \$5,000 in a savings account (Tr. 57). In addition, he estimates having about \$16,500 in a 401(k) account (Tr. 72). He did not provide documentary evidence to support his estimates.

## 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.<sup>4</sup> 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.”<sup>5</sup> A favorable decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.<sup>6</sup> 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.<sup>7</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>8</sup> The government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>9</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>10</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>11</sup> In *Egan*, the Supreme

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<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> *Egan*, 484 U.S. at 531.

<sup>6</sup> Directive, ¶ 3.2.

<sup>7</sup> Directive, ¶ 3.2.

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

<sup>9</sup> Directive, Enclosure 3, ¶ E3.1.14.

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

<sup>11</sup> Directive, Enclosure 3, ¶ E3.1.15.

Court stated that the burden of proof is less than a preponderance of the evidence.<sup>12</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>13</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>14</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>15</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>16</sup> 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 indicates inability to satisfy debts<sup>17</sup> and a history of not meeting financial obligations<sup>18</sup> within the meaning of Guideline F. The record evidence is more than sufficient to establish these two disqualifying conditions. It appears Applicant has lived beyond his

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<sup>12</sup> *Egan*, 484 U.S. at 531.

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

<sup>14</sup> Executive Order 10865, § 7.

<sup>15</sup> Revised Guidelines at pp. 13–14 (setting forth the security concern and the disqualifying and mitigating conditions under Guideline F).

<sup>16</sup> Revised Guidelines at p. 13.

<sup>17</sup> DC 1 is "inability or unwillingness to satisfy debts."

<sup>18</sup> DC 3 is "a history of not meeting financial obligations."

means, has been financially irresponsible, or is simply uninterested in addressing his past delinquent debts or a combination thereof. These circumstances do not bode well for his security suitability.

All of the mitigating conditions under Guideline F have been considered and none apply. A potential mitigating condition is MC 4, which requires a person to initiate a good-faith effort to repay overdue creditors or otherwise resolve debts.<sup>19</sup> He has taken a few positive steps to resolve his financial problems as evidenced by paying off the \$111 collection account. But his efforts, in light of the remaining unaddressed financial problems, are not enough to qualify as a good-faith effort.

Applicant has done little to demonstrate an intent to clean up his financial house. Concerning his past delinquent debts, what is missing here is: (1) a realistic and workable plan; (2) documented actions taken in furtherance of the plan; and (3) a measurable improvement to the situation. In simple terms, he did not present sufficient evidence to establish his case.

Given the lack of documentation, his claims, representations, and estimations cannot be accepted as facts that a reasonable person might accept as reliable evidence.<sup>20</sup> Large bureaucratic institutions—like the Defense Department and the security-clearance programs it administers—do not run on word-of-mouth.<sup>21</sup> They run on documentation. As a former soldier for ten years, Applicant should be aware of this concept. The documentation can be stored electronically or on paper, but it is up to Applicant to produce reliable evidence, to include documentary evidence, to rebut, explain, extenuate, or mitigate the facts admitted by him and proven by the record evidence.<sup>22</sup> Although Applicant is not legally required to produce documentary evidence to prevail, the lack of documentation in a financial case makes it difficult to reach a favorable decision under the clearly-consistent standard. Accordingly, Guideline F is decided against Applicant.

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 was given due consideration and that analysis does not support a favorable decision. This case is decided against Applicant.

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<sup>19</sup> MC 4 is “ the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”

<sup>20</sup> See Directive, Enclosure 3, ¶ E3.1.32.1 (scope of appellate review for findings of fact).

<sup>21</sup> Examples of other large bureaucratic institutions that rely heavily on documentation include banks, insurance companies, hospitals, universities, and the Armed Forces.

<sup>22</sup> Directive, Enclosure 3, ¶ E3.1.15.

## **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.l:	Against Applicant

## **Conclusion**

In light of all of the circumstances, it is not clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Michael H. Leonard  
Administrative Judge