



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



In the matter of:	)	
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	)	ISCR Case No. 14-04960
Applicant for Security Clearance	)	

**Appearances**

For Government: Tovah A. Minster, Esq., Department Counsel  
For Applicant: *Pro se*

01/14/2016

**Decision**

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny him a security clearance to work in the defense industry. He has a history of financial problems or difficulties. His financial problems are being resolved and are under control. He initiated a good-faith effort to repay his delinquent debts and has made good progress in doing so. He presented sufficient evidence to explain and mitigate his problematic financial history. Accordingly, this case is decided for Applicant.

**Statement of the Case**

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86 Format) on December 26, 2013.<sup>1</sup> After reviewing the application and information gathered during a background investigation, the Department of Defense

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<sup>1</sup> Exhibit 1 (this document is commonly known as a security clearance application).

(DOD),<sup>2</sup> on July 6, 2015, sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant him eligibility for access to classified information.<sup>3</sup> The SOR is similar to a complaint. It detailed the reasons for the action under the security guideline known as Guideline F for financial considerations. Applicant answered the SOR on July 22, 2015, and requested a hearing.

The case was assigned to me on October 28, 2015. The hearing was held as scheduled on January 5, 2016. Department Counsel offered Exhibits 1–4, and they were admitted. Applicant offered Exhibits A–H, and they were admitted. Other than Applicant, neither party called any witnesses. The hearing transcript (Tr.) was received on January 13, 2016.

### **Findings of Fact**

Applicant is a 46-year-old employee who is seeking to obtain a security clearance, although he has previously held a security clearance. He has worked for his current employer since October 2013. His employment record includes active duty military service during 1987–2004. Although he was administratively separated from military service due to alcohol-rehabilitation failure, he received an honorable discharge. Since his discharge in 2004, he has worked in the defense industry as an aviation mechanic, senior logistics engineer, functional analyst, and principle logistics engineer.

Applicant's first marriage ended in divorce while he was serving in the military. He married for the second time in 2012. His wife is not employed outside the home, because she has been determined to be disabled by the Social Security Administration and receives a monthly Social Security benefit.<sup>4</sup> In addition to his spouse, Applicant's household includes a 18-year son, a 19-year old daughter with an infant child, and the 20-year-old boyfriend who is the father of the infant.

Applicant has a history of financial problems, which he does not dispute. The SOR allegations consist of four collection or charged-off accounts for a total of about

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<sup>2</sup> The SOR was issued by the DOD Consolidated Adjudications Facility, Fort Meade, Maryland. It is a separate and distinct organization from the Defense Office of Hearings and Appeals, which is part of the Defense Legal Services Agency, with headquarters in Arlington, Virginia.

<sup>3</sup> This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply here. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

<sup>4</sup> Exhibit C.

\$7,512. He admits the alleged debts, which are also established by credit reports from 2014 and 2015.<sup>5</sup>

Applicant traces his financial problems or difficulties to a period of unemployment from October 2012 to October 2013. He was terminated from employment under a “release without prejudice” provision of the company’s separation policy due to failure to maintain a security clearance.<sup>6</sup> His security clearance was revoked, after a hearing before another administrative judge, under the security guidelines of alcohol consumption and personal conduct.<sup>7</sup> None of those matters is at issue here. He was also unemployed, due to a lay off, for about a year during 2009–2010, but he does not attribute that unemployment to his current circumstances.

Applicant presented substantial documentation showing that he has resolved or is in the process of resolving the four delinquent debts.<sup>8</sup> In mid-2015, he paid off a small medical collection account and entered into repayment installment agreements for the other three delinquent debts. The current status of each debt in the SOR is discussed below.

The delinquent debt in SOR ¶ 1.a is a \$37 medical collection account. Applicant resolved this debt with a payment of \$55 in July 2015.

The delinquent debt in SOR ¶ 1.b is a \$2,277 collection account stemming from a credit card account. Applicant arranged a repayment installment agreement with the creditor in June 2015. As of January 1, 2016, he has made 15 payments for a total of \$750, reducing the balance to \$1,276. He expects to finish making payments in September 2016.

The delinquent debt in SOR ¶ 1.c is a \$1,694 collection account with a telecommunications company. Applicant arranged a repayment installment agreement with the creditor in July 2015. As of January 1, 2016, he has made 13 payments for a total of \$715, reducing the balance to \$1,284. He expects to finish making payments in August 2016.

The delinquent debt in SOR ¶ 1.d is a \$3,504 charged-off account stemming from a credit card account. Applicant negotiated a settlement for the lesser amount of \$1,752, and arranged a repayment installment agreement with the creditor in July 2015. As of January 1, 2016, he has made 13 payments for a total of \$949, reducing the balance to \$803. He expects to finish making payments in June 2016.

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<sup>5</sup> Exhibits 2, 3, and 4.

<sup>6</sup> Exhibit A-1.

<sup>7</sup> ISCR Case No. 10-10587 (Sep. 25, 2012).

<sup>8</sup> Exhibits B, C, D, E, F, G, and H.

After payment of monthly expenses, to include the debt payments noted above, Applicant has a positive cash flow of about \$500.<sup>9</sup> His debt-to-income ratio is now about 41%, which is high, but he projects a decrease to 35% by September 2016, and a further decrease to 26% by January 2017, which is about one year from now.

Applicant has the unequivocal support and favorable recommendation of his regional manager.<sup>10</sup> A retired Navy captain and aviator, the regional manager has confidence in Applicant's reliability, trustworthiness, and judgment. The regional manager also believes Applicant is capable of performing at higher levels of responsibility (with the necessary security clearance), which will result in an increase in salary.

### Law and Policies

It is well-established law that no one has a right to a security clearance.<sup>11</sup> As noted by the Supreme Court in *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>12</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.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.<sup>13</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>14</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>15</sup> The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>16</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate

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<sup>9</sup> Exhibit D.

<sup>10</sup> Exhibit A; Tr. 27–41.

<sup>11</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) (no right to a security clearance).

<sup>12</sup> 484 U.S. at 531.

<sup>13</sup> Directive, ¶ 3.2.

<sup>14</sup> Directive, ¶ 3.2.

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

<sup>16</sup> Directive, Enclosure 3, ¶ E3.1.14.

facts that have been admitted or proven.<sup>17</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>18</sup> In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>19</sup> The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.<sup>20</sup>

The AG set forth the relevant standards to consider when evaluating a person's security clearance eligibility, including disqualifying conditions and mitigating conditions for each guideline. In addition, each clearance decision must be a commonsense decision based upon consideration of the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept.

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

## Discussion

Under Guideline F for financial considerations,<sup>22</sup> the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive indebtedness or financial problems or difficulties.<sup>23</sup> The overall concern is:

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

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<sup>17</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>18</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>19</sup> *Egan*, 484 U.S. at 531.

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

<sup>21</sup> Executive Order 10865, § 7.

<sup>22</sup> AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

<sup>23</sup> ISCR Case No. 95-0611 (App. Bd. May 2, 1996) (It is well settled that "the security suitability of an applicant is placed into question when that applicant is shown to have a history of excessive indebtedness or recurring financial difficulties.") (citation omitted); and see ISCR Case No. 07-09966 (App. Bd. Jun. 25, 2008) (In security clearance cases, "the federal government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner.") (citation omitted).

questions about an individual's reliability, trustworthiness, and ability to protect classified information.<sup>24</sup>

The concern is broader than the possibility that a person might knowingly compromise classified information to obtain money or something else of value. It encompasses concerns about a person's self-control, judgment, and other important qualities. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

The evidence supports a conclusion that Applicant has a history of financial problems or difficulties. Taken together, the evidence indicates an inability to satisfy debts<sup>25</sup> and a history of not meeting financial obligations<sup>26</sup> within the meaning of Guideline F.

In mitigation, I have considered six mitigating conditions under Guideline F,<sup>27</sup> and I have considered the following as most pertinent:

AG ¶ 20(c) 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; and

AG ¶ 20(d) the [person] initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant fell behind on his financial obligations due to a period of unemployment in 2012–2013. His unemployment was not a circumstance beyond his control, which he acknowledged, because it was due to his failure to maintain a security clearance. He returned to full-time employment in 2013, and he is in the process of recovering from the difficult financial situation he found himself in. Since mid-2015, he paid in full a minor medical collection account, and he has adhered to the three repayment agreements by making 41 separate payments for a total of about \$2,414, or about 32% of the indebtedness in the SOR. He provided substantial documentation of his interactions with his creditors. His monthly budget indicates that he has adequate cash flow to continue adhering to the repayment agreements. For all these reasons, I conclude that there are clear indications that Applicant's financial problems or difficulties are being resolved and under control, and that he has initiated a good-faith effort to repay his delinquent debts.

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<sup>24</sup> AG ¶ 18.

<sup>25</sup> AG ¶ 19(a).

<sup>26</sup> AG ¶ 19(c).

<sup>27</sup> AG ¶ 20(a)–(f).

Of course, the purpose of this case is not aimed at collecting debts.<sup>28</sup> Rather, the purpose is to evaluate an applicant's judgment, reliability, and trustworthiness consistent with the guidelines in the Directive. In evaluating Guideline F cases, the Appeal Board has established the following standard:

The Board has previously noted that the concept of a meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payments of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.<sup>29</sup>

Here, the evidence supports a conclusion that Applicant has established a plan and is taking steps to implement that plan sufficient to mitigate the concern. His actions establish actual debt reduction as well as a track record of progress showing a favorable trend that is likely to continue until completion of the repayment agreements later this year.

Applicant's history of financial problems no longer creates doubt about his reliability, trustworthiness, good judgment, and ability to protect classified information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also gave due consideration to the whole-person concept.<sup>30</sup> Accordingly, I conclude that he met his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

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<sup>28</sup> ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

<sup>29</sup> ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotations omitted).

<sup>30</sup> AG ¶ 2(a)(1)–(9).

## **Formal Findings**

The formal findings on the SOR allegations are:

Paragraph 1, Guideline F: For Applicant

Subparagraphs 1.a–1.d: For Applicant

## **Conclusion**

In light of the record as a whole, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

Michael H. Leonard  
Administrative Judge