



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



In the matter of: )  
 )  
----- ) ISCR Case No. 14-03665  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Gregg Cervi, Esq., Department Counsel  
For Applicant: *Pro se*

07/14/2015  
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**Decision**  
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LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to revoke a security clearance to work in the defense industry. He provided sufficient evidence to explain and mitigate the financial considerations security concern. In addition, he was involved in two incidents of family violence in 2008 and 2012, both of which resulted in misdemeanor criminal convictions in 2008 and 2013, respectively. He is serving a sentence to probation until July 2015. Applicant's two criminal convictions for family violence offenses in a period of about five years is simply too much to overlook or explain away. Accordingly, this case is decided against Applicant.

**Statement of the Case**

Applicant completed and submitted a Questionnaire for National Security Positions (Standard Form 86) on September 18, 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), on October 9, 2014, 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>2</sup> The SOR is similar to a complaint.<sup>3</sup> It detailed the reasons for the action under the security guidelines known as Guideline F for financial considerations and Guideline J for criminal conduct. He answered the SOR on November 7, 2014, and requested a hearing.

The case was assigned to me on February 25, 2015. The hearing was held as scheduled on March 24, 2015. Department Counsel offered Exhibits 1–7, and they were admitted. Applicant offered Exhibits A and B, and they were admitted. The hearing transcript (Tr.) was received on March 31, 2015.

The record was kept open until April 7, 2015, to provide Applicant an opportunity to submit additional documentation. Those matters were timely submitted and they are admitted, without objections, as Exhibits C and D.

### **Findings of Fact**

Applicant is a 37-year-old supervisor/aircraft electrician for a federal contractor. He is seeking to retain a security clearance previously granted to him in 2011. He has worked for his current employer since 2008. His first marriage ended in divorce, and he married for the second time in 2007. He and his wife have two children under the age of nine. He has a 15-year-old child from his first marriage. In addition, he has a 12-year-old child from another relationship. He pays child support for both of those children.

This case is Applicant's second appearance before me. I heard his first case in 2011, when I granted him a security clearance. That matter was raised as a potential issue at the start of the 2015 hearing, and neither Department Counsel nor Applicant requested that I recuse or disqualify myself based on participation in Applicant's 2011 case.<sup>4</sup> The findings of fact from my 2011 decision are incorporated herein by reference.<sup>5</sup> In that decision, I found that Applicant had paid or settled 12 of 21 delinquent debts, had otherwise resolved 2 debts, had 2 debts in the process of repayment, had 4 unresolved

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<sup>2</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>3</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>4</sup> Tr. 6–9.

<sup>5</sup> Exhibit 2 (Decision in ISCR Case No. 09-01011, Jul. 18, 2011).

debts, and 1 debt was a duplicate. Based on those circumstances, I concluded that he had presented sufficient evidence to establish a good-faith effort to repay overdue creditors or otherwise resolve the debts. In addition, I concluded that he did not provide deliberately false answers in response to two questions about his financial record on his then security clearance application.

Applicant's employment history includes military service in the U.S. Marine Corps during 1995–2002. While on active duty, he was trained and worked as an engineer equipment operator. He was honorably discharged as a sergeant (pay grade E-5).

Since leaving military service, Applicant obtained further education and successfully completed a transition to the aviation industry. He attended a college of aeronautics and technology during 2006–2008, was awarded a degree or certificate as an aviation electrician in March 2008, and shortly thereafter began working for his current employer as an aircraft electrician. He continued his education during 2008–2012, and was awarded a bachelor's degree in May 2012. And he will soon complete a master's degree in the field of management, which was a company-paid benefit in exchange for a two-year commitment. He anticipates a possible promotion to a managerial position in 2016, which would result in a substantial increase in pay.<sup>6</sup>

The SOR alleged two delinquent accounts, both of which stemmed from deficiency balances after repossessions. The first delinquent account is a \$4,470 charged-off account, which was one of the unresolved debts in my 2011 decision.<sup>7</sup> Applicant initiated contact with the creditor in 2014 and established a repayment agreement. As of March 2015, he had made six monthly payments of \$50 monthly, thereby reducing the balance to \$4,171.<sup>8</sup> The second delinquent account is a \$6,974 collection account. Applicant had on-again, off-again contact with the creditor, he was unable to establish any regular payments, and he understands the creditor eventually cancelled or forgave the debt in 2014.<sup>9</sup> He submitted a page from an October 2014 credit report, which describes the account as a paid collection with a \$0 balance.<sup>10</sup> I find that the account was not paid or settled, but it is otherwise resolved.

Overall, Applicant's financial situation is relatively stable as shown by a current personal financial statement.<sup>11</sup> It shows a total net monthly income of \$5,700, total monthly expenses of \$2,700, total monthly debt payments of \$885, and a positive net

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<sup>6</sup> Tr. 65–67.

<sup>7</sup> Exhibit 2 at 5.

<sup>8</sup> Exhibit C.

<sup>9</sup> Tr. 31–32, 44–46.

<sup>10</sup> Exhibit A.

<sup>11</sup> Exhibit D.

remainder of \$2,115. He estimated his 2015 annual salary at \$70,000 to \$80,000 plus overtime resulting in a gross income of about \$100,000.<sup>12</sup> Applicant's wife is not employed outside the home, but she receives \$800 monthly in disability compensation from the Social Security Administration due to an assault by a former boyfriend.<sup>13</sup> In addition, Applicant recently qualified for a mortgage loan and bought a home in which he and his family are now living.<sup>14</sup>

The SOR also alleged two incidents of family violence between Applicant and his wife, the first in 2008 and the second in 2012. Both incidents ended in misdemeanor criminal convictions.<sup>15</sup> Both incidents stemmed from arguments that escalated to the point of violence.

The April 2008 incident took place during the first year of marriage when Applicant and his wife were arguing about having another child.<sup>16</sup> Their argument escalated to the point where Applicant head butted his wife resulting in a bruise to her forehead. Applicant pleaded guilty to the misdemeanor offense resulting in a \$750 fine, court costs of \$305, and probation for one year. He was also required to attend anger-management and conflict-resolution counseling.

The November 2012 incident took place after a series of events that occurred over time that escalated into a major dispute between Applicant and his wife.<sup>17</sup> The events included money issues, discovery that his wife had a boyfriend, and accountability and honesty issues. On the day of the incident, they had a lengthy argument over his wife hiding his truck keys thereby preventing him from leaving. Applicant described the fight as follows:

She came at me, not really like to attack me, but she kind of ran towards me, while I pushed her back away from me. She then kicked me, and then she punched me, and then she also - - she has fake fingernails, so she grabbed a hold of me and scratched me, so I had scratch marks down my right - - down my left cheek and right here on my throat, from where she had grabbed a hold of me.

So now we are rolling around of the floor, still yelling at each other. Our two children ran outside to the neighbor's house to get them, and she

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<sup>12</sup> Tr. 36–37.

<sup>13</sup> Tr. 34–35.

<sup>14</sup> Tr. 62–63.

<sup>15</sup> Exhibits 5, 6, and 7.

<sup>16</sup> Tr. 46–47.

<sup>17</sup> Tr. 47–53.

finally said, I will tell you where your truck keys are if you let me go. So I did. Well, she jumped up and ran out the door, too, went to the neighbor's house, who is now calling 911.<sup>18</sup>

Applicant followed his wife outside, threw two cell phones to the ground and broke them, and went back inside the home and waited for the police to arrive and arrest him, which they did. He was charged with a felony-level family assault offense because it was a second offense involving a family member, and he was charged with interfering with an emergency call by throwing and breaking the cell phones.

Applicant self-reported the incident to his security manager within two days of his arrest.<sup>19</sup> He and his wife immediately separated and lived apart for several months until July 2013, when they reconciled. That same month he then pleaded guilty to the misdemeanor interference offense and was placed on deferred adjudication community supervision for 12 months. One year later, the state court discharged Applicant from deferred adjudication community supervision and the proceedings were dismissed.<sup>20</sup>

Concerning the felony-level family assault offense, Applicant pleaded guilty to a lesser included misdemeanor family assault offense after his wife came forward and explained her role in the incident. The state court sentenced Applicant to pay a \$500 fine, court costs of \$209, and \$150 in fees, and to serve probation for two years, which is scheduled to end in July 2015. Applicant explained that he has complied with all the terms of probation and was waiting for the term to expire.

Applicant has complied with all court-ordered counseling, but he and his wife have not participated in any marriage or other type of counseling because she refuses to attend.<sup>21</sup> He also explained that he and his wife are doing several things to avoid a recurrence and using techniques to de-escalate disagreements.<sup>22</sup>

### **Law and Policies**

It is well-established law that no one has a right to a security clearance.<sup>23</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

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<sup>18</sup> Tr. 51.

<sup>19</sup> Exhibit 5.

<sup>20</sup> Exhibit B.

<sup>21</sup> Tr. 53–55.

<sup>22</sup> Tr. 63–65.

<sup>23</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).

side of denials.”<sup>24</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>25</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>26</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>27</sup> The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>28</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>29</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>30</sup>

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>31</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>32</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

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<sup>24</sup> 484 U.S. at 531.

<sup>25</sup> Directive, ¶ 3.2.

<sup>26</sup> Directive, ¶ 3.2.

<sup>27</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>28</sup> Directive, Enclosure 3, ¶ E3.1.14.

<sup>29</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>30</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>31</sup> *Egan*, 484 U.S. at 531.

<sup>32</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

person a security clearance is not a determination of an applicant's loyalty.<sup>33</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>34</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>35</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 questions about an individual's reliability, trustworthiness, and ability to protect classified information.<sup>36</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 inability or unwillingness to satisfy debts<sup>37</sup> and a history of not meeting financial obligations<sup>38</sup> within the meaning of Guideline F.

In mitigation, I have considered six mitigating conditions under Guideline F,<sup>39</sup> and I have especially considered the following as most pertinent:

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<sup>33</sup> Executive Order 10865, § 7.

<sup>34</sup> AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

<sup>35</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).

<sup>36</sup> AG ¶ 18.

<sup>37</sup> AG ¶ 19(a).

<sup>38</sup> AG ¶ 19(c).

<sup>39</sup> AG ¶ 20(a)–(f).

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

To start, Applicant's history of financial problems or difficulties goes back several years, as established in my 2011 decision, and he has been making slow but steady progress in resolving them. The two delinquent debts in the 2014 SOR were incurred years ago. The charged-off account is now being resolved by a monthly repayment agreement, and he has made six monthly payments thereby reducing the balance owed. The collection account was otherwise resolved when the creditor cancelled or forgave it, and a 2014 credit report shows it was paid. Taken together, combined with Applicant's overall financial situation, he provided sufficient evidence to explain and mitigate the financial considerations security concern.

Concerning the criminal conduct under Guideline J, there is substantial evidence of Applicant's involvement in criminal activity that creates doubt about his judgment, reliability, trustworthiness, and ability or willingness to be a law-abiding person.<sup>40</sup> The available evidence requires application of the following disqualifying conditions:

AG ¶ 31(a) a single serious crime or multiple lesser offenses;

AG ¶ 31(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted, or convicted; and

AG ¶ 31(d) [the person] is currently on parole or probation.

Applicant stands twice convicted in a period of about five years of family violence offenses against his wife. The second incident was serious, as shown by Applicant's own description, quoted above, and the felony-level charge that was initially brought against him. When the record closed in this case (April 2015), he was currently on probation, although it should have recently concluded. In addition, I have real concerns and doubts whether Applicant's history of marital strife is safely in the past and will not recur. On that point, it is telling that Applicant has not engaged in any counseling other than what was required by the court. The fact that his wife refuses to participate with Applicant in counseling is telling as well. Taken together, those circumstances militate against a favorable decision.

In reaching this conclusion, I have considered all the mitigating conditions under Guideline J,<sup>41</sup> and none, individually or in combination, is sufficient to mitigate the security concern raised by Applicant's history of criminal activity. At bottom, Applicant's two criminal convictions for family violence offenses in a period of about five years is simply too much to overlook or explain away. In reaching this conclusion, I weighed the

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<sup>40</sup> AG ¶ 30.

<sup>41</sup> AG ¶¶ 32(a)–(e).

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>42</sup> I am convinced that Applicant accepts responsibility for his actions,<sup>43</sup> but I am not convinced that the risk of recurrence is acceptably low. Accordingly, I conclude that he did not meet 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.

### **Formal Findings**

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline F:	For Applicant
Subparagraphs 1.a–1.b:	For Applicant
Paragraph 2, Guideline J:	Against Applicant
Subparagraphs 2.a–2.b:	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 access to classified information. Eligibility is denied.

Michael H. Leonard  
Administrative Judge

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<sup>42</sup> AG ¶ 2(a)(1)–(9).

<sup>43</sup> For example, he stated that his conduct was “inexcusable” in his closing argument. Tr. 75.