



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



In the matter of: )  
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----- ) ISCR Case No. 17-03899  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Mary Margaret Foreman, Esq., Department Counsel  
For Applicant: *Pro se*

07/16/2019

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**Decision**

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LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to revoke his eligibility for access to classified information. His history of financial problems was due, in part, to circumstances largely beyond his control; namely, a difficult relationship with a cohabitant, a dispute over their daughter, and a change of jobs and resulting decline in income so he could be near his daughter. He has acted responsibly under the circumstances by resolving nearly all of the delinquent debt at issue, and he is disputing a collection account stemming from an apartment lease. He also fixed his tax problems and is in compliance with both state and federal tax authorities. Accordingly, this case is decided for Applicant.

**Statement of the Case**

Applicant completed and submitted a Standard Form (SF) 86, Questionnaire for National Security Positions, the official form used for personnel security investigations, on September 14, 2014. (Exhibit 1) This document is commonly known as a security clearance application. Thereafter, on April 24, 2018, after reviewing the application and the information gathered during a background investigation, the Department of Defense

Consolidated Adjudications Facility, Fort Meade, Maryland, 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. The SOR is similar to a complaint. It detailed the factual reasons for the action under the security guideline known as Guideline F for financial considerations.

Applicant answered the SOR on May 4, 2018. He admitted the SOR allegations except for a \$912 collection account, which he disputes, and two minor medical collection accounts. He also requested a hearing before an administrative judge.

The case was assigned to another judge on August 20, 2018, and then reassigned to me on October 2, 2018. The hearing took place as scheduled on October 12, 2018. Applicant appeared without counsel. Both Department Counsel and Applicant offered documentary exhibits, which were admitted as Exhibits 1-4 and A-L, respectively. No witnesses other than Applicant were called.

The record was kept open until October 31, 2018, to allow Applicant an opportunity to provide additional documentary evidence. He made a timely submission, and the post-hearing matters are admitted without objections as Exhibits M-U.

### **Findings of Fact**

Applicant is a 44-year-old employee who is seeking to retain a security clearance. He is employed as a technician who installs and repairs security systems at overseas locations. He has been so employed in Afghanistan since July 2016. He has had multiple overseas job locations with the same employer since he began working for them in mid-2014. His formal education includes a high school diploma and some college. He served on active duty in the U.S. Marine Corps during 1995-1999 and received an honorable discharge. He married recently in July 2018, and he has three stepchildren from his marriage. (Tr. 69-71) He also has a 12-year-old daughter from a previous relationship to whom he pays child support and provides health insurance. He is now a resident of a state that does not impose an income tax.

The evidence establishes that Applicant has a history of financial problems, which he does not dispute. The SOR concerns the following matters: (1) five delinquent accounts, charged off or in collection, ranging in amounts from \$164 to \$5,966 for a total of about \$10,321; (2) failure to timely file income tax returns in the state of Virginia for tax year 2012 and failure to timely pay income tax for the same year; (3) failure to timely file income tax returns in the state of Oklahoma for tax years 2012, 2013, and 2014; and (4) failure to timely file federal income tax returns for tax years 2012 and 2013 and failure to timely pay income tax for those years. Except for the \$912 collection account he is disputing and a \$271 medical collection account, Applicant admitted the SOR allegations in his answer to the SOR or during his hearing testimony or both. Additional evidence establishing the SOR allegations is found in the documentary evidence.

Applicant attributed his history of financial problems to a difficult relationship with a cohabitant during 2006-2009, which ended in separation in June 2009, and the

resulting dispute over visitation with and custody of their daughter. He explained at length that his cohabitant was financially irresponsible, failed to pay bills on a timely basis, and overspent during their relationship. For example, he stated that she wrote 40 bad checks in less than a year and failed to pay for daycare while he was working in Afghanistan. (Tr. 35-36) After the separation in 2009, Applicant stopped working overseas and took a job where he could live near his daughter and be involved with her. As a result, he earned less money. In 2012, he brought an action in family court, which was unsuccessful. At that point he decided he could no longer afford to live in a high-cost of living area along with paying child support and meet his other financial obligations. He moved to Oklahoma in mid-2012 for a job as a junior field engineer in the energy industry. He lived about half of 2012 in Virginia and half in Oklahoma, which is the basis for the requirement to file two state income tax returns for tax year 2012. He worked in Oklahoma for about two years until June 2014, when he decided to leave the energy industry and resumed working overseas as a technician, which is more lucrative.

Taken together, the circumstances noted above put Applicant in a financial hole and created some chaos in his financial affairs. He described it as a “mess.” (Tr. 35) After departing Oklahoma and returning to working overseas, he became more financially stable and was able to begin the process of putting his financial house in good order. For example, he filed the past-due federal income tax returns for 2012 and 2013 in mid-2015.

Addressing the five delinquent accounts first, the charged-off account for \$5,966 stems from a deficiency balance on an automobile loan obtained from a credit union. (Tr. 49-50; Exhibits B and M) The vehicle was repossessed in August 2013. The balance due was adjusted to \$4,733, and Applicant made a series of payments during August and September 2018. The debt was paid in full on September 28, 2018.

The charged-off account for \$3,008 stems from a line of credit obtained from a credit union. (Tr. 50-51; Exhibit N). The debt was settled in full as of May 11, 2018.

The \$912 collection account stems from an apartment lease Applicant had when he was living in Oklahoma. (Tr. 51-54; Exhibit L) He explained at length that he did not break the lease and left the apartment in good order. He challenged the \$912 bill when he received it from the landlord, but they refused to provide the basis for the bill and would not deal with him. He hired an attorney in January 2014 who formally disputed the bill with the landlord. No response was received from the attorney’s demand letter.

The \$271 medical collection account is a mystery to Applicant. (Tr. 54-55; Exhibit 4) He had no information on the account and was unable to verify the account. While the debt is reflected in an October 2017 credit report, it was not reflected in the most recent credit report in the Government’s possession. (Tr. 55) Given these circumstances, I find that this debt is no longer a concern.

The \$164 medical collection account stems from a medical visit or appointment in Oklahoma. (Tr. 54-55; Exhibit A). The bill, after payment by insurance, was sent to an

address he had since departed. He was able to verify the account and paid it off with a \$170 payment in August 2018.

Turning to the tax problems, Applicant presented extensive documentation to establish that he is now in compliance with state and federal tax authorities, has filed all the required returns, and does not owe back taxes. (Exhibits C-K and O-S) As noted above, Applicant filed the past-due federal returns for tax years 2012 and 2013 in mid-2015. He self-prepared the returns with the aid of TurboTax. (Exhibit P) For tax year 2012, the IRS account transcript shows an extension was granted to October 15, 2013; the return was filed on June 12, 2015; penalties for late filing and late payment of tax were assessed; a \$3,844 credit was transferred in from tax year 2015; and the balance was \$0 as of May 2016. (Exhibit C) Likewise, for tax year 2013, the IRS account transcript shows the return was filed on July 13, 2015; penalties for late filing and late payment of tax were assessed; a \$1,310 payment was made with the return; and the balance was less than \$1 and written-off as of September 14, 2015, the effect of which is a \$0 balance. (Exhibit D) In addition to the tax years at issue, IRS transcripts for tax years 2014, 2015, 2016, and 2017, show that Applicant timely filed returns and has \$0 balances. (Exhibits E, F, G, and H)

More recently in April-May 2018, after the SOR was issued in this case, Applicant retained the services of a CPA in Oklahoma to review his tax returns. (Tr. 60) As a result, federal returns for tax years 2012 and 2013 were filed in May 2018. (Exhibit O) These returns are not reflected in the IRS account transcripts mentioned above, which were issued on July 30, 2018.

Turning next to the Oklahoma tax matters, Applicant filed returns for tax years 2012, 2013, and 2014 in approximately March 2015, which means the 2014 return was timely filed. (Exhibits P and Q) He self-prepared the returns with the aid of TurboTax. He filed as an Oklahoma nonresident/part-year taxpayer for tax years 2012 and 2014. He was due refunds of \$95 and \$53 for tax years 2012 and 2013. He owed a balance of \$9 for tax year 2014. As with the federal returns in April-May 2018, Applicant tasked the Oklahoma CPA to review his Oklahoma tax returns. (Exhibit O) Returns were filed in May 2018 reflecting a \$17 refund for tax year 2012, a \$53 refund for tax year 2013, and a balance due of \$1,044 for tax year 2014. He subsequently contacted the Oklahoma tax authority and was told that he owed \$19. (Tr. 61) He paid that amount through the state's online system. (Exhibit K)

Turning last to the Virginia tax matters, the 2012 tax return was not filed until May 2018, as it was also prepared by the Oklahoma CPA in April-May 2018. (Exhibit O) Applicant conceded that he did not have a good answer why the 2012 return was filed so late, he lost track of it while addressing other matters, and receipt of the SOR in April 2018 got his attention. The May 2018 Virginia return reflects an amount owed of \$3,279. He made a payment of \$550 in July 2018. (Exhibit I) Upon his return to Afghanistan after the hearing, he received a notice of assessment from the Virginia tax authority for a total amount owed of \$5,349. (Exhibits R and S) Applicant believed it was mistaken due to using his combined income from both Virginia and Oklahoma, as he was a part-year resident of Virginia in 2012. He attempted to contact his Oklahoma CPA several

times. After not receiving a timely response, he retained the services of a Virginia CPA in mid-October 2018. (Exhibit T) An amended return for tax year 2012 was filed on October 31, 2018, and it reflects a small refund and no further tax owed. (Exhibit U)

Overall, Applicant's current financial situation appears to be stable. He earns an annual gross income of about \$140,000. (Tr. 58) He pays \$744 monthly for child support and about \$235 in health insurance for his minor daughter, and he is current with his payments. (Tr. 58-59) He has a 401(k) account with his current employer with a balance of about \$17,185. (Tr. 81) He has a brokerage account with a balance of about \$15,000. (Tr. 82) He has a savings account with a balance of about \$11,000, and he has a checking account with a balance of about \$1,100. (Tr. 83) He traveled from Afghanistan at his own expense for the hearing in this case.

### Law and Policies

This case is adjudicated under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective June 8, 2017.

It is well-established law that no one has a right to a security clearance.<sup>1</sup> As noted by the Supreme Court in *Department of the Navy v. Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>2</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. In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.<sup>3</sup> The Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.<sup>4</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>5</sup> Under the Directive, the parties have the following burdens: (1) Department Counsel has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted; (2) an applicant is responsible for

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<sup>1</sup> *Department of the 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>2</sup> 484 U.S. at 531.

<sup>3</sup> 484 U.S. at 531.

<sup>4</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

<sup>5</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven; and (3) an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>6</sup>

## **Discussion**

Under Guideline F for financial considerations, 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. The overall concern is set forth in AG ¶ 18 as follows:

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 or sensitive information. . . .

The concern is broader than the possibility that a person might knowingly compromise classified or sensitive 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 or sensitive information.

In analyzing the facts of this case, I considered the following disqualifying and mitigating conditions as most pertinent:

AG ¶ 19(a) inability to satisfy debts;

AG ¶ 19(c) a history of not meeting financial obligations;

AG ¶ 19(f) failure to file or fraudulently filing annual federal, state, or local income tax returns or failure to pay annual federal, state, or local income tax as required;

AG ¶ 20(b) 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, a death, divorce, or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

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<sup>6</sup> Directive, Enclosure 3, ¶¶ E3.1.14 and E3.1.15.

AG ¶ 20(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

The evidence supports a conclusion that Applicant has a history of financial problems that is sufficient to raise a security concern under Guideline F. The disqualifying conditions noted above apply to this case.

Applicant's problematic financial history is traceable to a difficult relationship with a cohabitant during 2006-2009, when they separated that year in June. The separation was largely due to the cohabitant's financial irresponsibility, failure to pay bills on time, and overspending. They fought over visitation with and custody of his daughter, and he changed jobs and worked for less money so he could be near his daughter during 2009-2012. He attempted a career change to the energy industry during 2012-2014 until deciding to return his previous employment working overseas for more money. Many of those circumstances were largely beyond his control. Moreover, his motive in making those changes was, he believed, in the best interests of his daughter.

Applicant has acted responsibly under the circumstances. He resolved nearly all of the delinquent debt at issue, and he is disputing a collection account stemming from an apartment lease. He also fixed his tax problems and is in compliance with both state and federal tax authorities, although he could have acted more promptly, especially with the state of Virginia. He is now in a much stronger financial position, meaning that it is unlikely that a similar problem will recur. By way of example, I note that he has timely filed federal income tax returns since 2014.

Following *Egan* and the clearly consistent standard, I have no doubts about Applicant's reliability, trustworthiness, good judgment, and ability to protect classified or sensitive 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 considered the whole-person concept. 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.

### **Formal Findings**

The formal findings on the SOR allegations are:

Paragraph 1, Guideline F:	For Applicant
Subparagraphs 1.a -- 1.g:	For Applicant

## **Conclusion**

It is clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Eligibility granted.

Michael H. Leonard  
Administrative Judge