



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 18-00861  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

08/19/2019

**Decision**

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for access to classified information. The evidence is not sufficient to mitigate his history of financial problems. It is too soon to tell if Applicant will follow through and resolve more than \$136,000 in delinquent debt. Accordingly, this case is decided against 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 August 30, 2017. (Exhibit 1) This document is commonly known as a security clearance application. Thereafter, on July 3, 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 July 19, 2018. Of the 11 delinquent financial accounts alleged in the SOR, he admitted 8 and denied 3. His denials acknowledged the debts and explained he was making progress in resolving those three debts. He also provided a lengthy explanation of extenuating circumstances, stating that the root cause of his financial problems was a failed investment in a 31-unit apartment complex, which is discussed further below. He requested a hearing before an administrative judge.

The case was assigned to me on September 24, 2018. The hearing took place on December 6, 2018. Applicant appeared without counsel. Department Counsel offered documentary exhibits, which were admitted as Exhibits 1-5. Applicant offered documentary exhibits, which were admitted as Exhibits A-D. Other than Applicant, no witnesses were called. The hearing transcript (Tr.) was received on December 13, 2018.

The record was kept open for approximately 30 days, until January 4, 2019, to provide Applicant an opportunity to submit additional documentation in support of his case. (Tr. 24, 56-57) Applicant made timely submissions, by e-mail, and those four documents are admitted without objections as Exhibit E.

### **Findings of Fact**

Applicant is a 47-year-old employee who is seeking to retain a security clearance that he has held for many years. He works in the areas of design and development for a company in the defense industry. His place of work is a military proving ground. Except for about four months in 2017, he has worked for the same company since 2002. His annual salary is about \$80,000. (Tr. 67-69) His formal education includes an associate's degree awarded in 2000 and a bachelor's degree in electronic engineering awarded in 2002. He earned both degrees while working full time. Married since 1992, he and his spouse have a 20-year-old child who lives with them while attending college. Applicant's background includes honorable service in the U.S. Air Force during 1990-1994.

Applicant admits a history of financial problems, which is also established by the documentary evidence. (Exhibits 1, 3, and 4) In particular, the SOR concerns 11 delinquent accounts, in collection, charged off, or past due, in amounts ranging from \$192 to \$48,039 for a total of about \$144,000.

As mentioned above, Applicant attributed his history of financial problems to a failed investment in a 31-unit apartment complex. (Exhibit D; Tr. 41-49) Applicant and his spouse, through their limited liability company, bought the apartment complex in July 2010 for a purchase price of \$478,854 with a down payment of \$80,000 due at closing. Applicant made the \$80,000 down payment through a combination of cash, equity, and borrowed money. For example, the \$34,608 collection account in SOR ¶ 1.i stems from money borrowed for the purchase. (Tr. 64-66) The deal was seller financed, and Applicant made monthly mortgage payments to the seller. The investment failed relatively quickly. In June 2013, Applicant sold the apartment complex for \$5,000, and the buyer assumed the note with the initial seller.

Both in his answer to the SOR and during his hearing testimony, Applicant provided a consistent explanation for the failed investment. Due to its clarity and completeness, the majority of his answer is quoted below:

The intent of this statement is to serve as an explanation of extenuating circumstances that caused my otherwise impeccable credit rating to fall into a state of disrepair. Over the past 12 years I have invested in rental property, including a 3-bedroom house, a 2-bedroom house, a 2-bedroom condominium, and a 1-bedroom house, all located in [the same small city in a neighboring state], and a 31-unit apartment complex located in [a major city in the same neighboring state]. Those properties, with the exception of the apartment complex, have proven to be excellent investments. The apartment complex is the root of my financial downfall. Approximately 6 years ago a neighboring property entered into foreclosure and sat vacant for several months. This derelict property attracted drug dealers, prostitution, and other illicit activity. These issues spilled over onto my property, causing my occupancy rate to drop below 50%. This required me to subsidize the apartment complex through personal funds. With fixed costs at \$5,000 per month for mortgage payments and insurance, plus variable costs for repairs and maintenance, coupled with very little incoming revenue, the situation quickly and severely negatively impacted my personal finances. I have since sold this property. When I purchased the apartment complex I paid an \$80,000 down payment. When I sold the apartment complex I received a check for \$5,000, but I considered myself fortunate to get out from under the ongoing issues and the exorbitant expenses related to this property. I am now on the road to financial recovery, but the effects are lasting and positive progress will take time.

Applicant has made some progress in resolving the delinquent accounts in the SOR, and he presented supporting documentation to establish that progress. (Exhibits A-C) The \$3,531 collection account in SOR ¶ 1.e was resolved through a payment arrangement calling for a series of payments for a total of \$2,000 made during 2018. (Exhibit C; Tr. 60-61). The \$4,427 past-due account for a mortgage loan on one of his rental properties in SOR ¶ 1.h was current as of July 2018. (Exhibit B; Tr. 61-63) The account had become past due again, due to some unexpected expenses, at the time of the December 2018 hearing, but Applicant anticipated the account would be current by January 2019. The unexpected expenses were three dental bills and additional college tuition above and beyond the normal amount paid by scholarship funding. (Exhibit E) The \$192 collection account in SOR ¶ 1.k was paid in full in January 2018. (Exhibit A; Tr. 66-67)

Otherwise, Applicant stated that there were no changes to the unresolved status of the other eight delinquent financial accounts in the SOR. (Tr. 55-67). For example, the \$48,039 collection account in SOR ¶ 1.a stems from a line of credit he had on his primary residence; the home was foreclosed in 2016; the debt was charged off; and he has not made any payments on the account in several years. (Tr. 37-40, 55, 58-60;

Exhibit 4 at 3) Likewise, the \$38,349 charged-off account in SOR ¶ 1.b stems from a \$44,564 loan used to purchase a pickup truck; the vehicle was repossessed; the loan balance was charged off in November 2014; and he has done nothing on the debt since the repossession. (Tr. 55-57; Exhibit 3 at 3) In sum, he did not submit documentation to establish that any of the eight delinquent debts were paid, settled, in a payment arrangement, in dispute, cancelled, forgiven, or otherwise resolved. I specifically find that those eight delinquent accounts are unresolved.

Applicant considered seeking relief via bankruptcy and consulted a bankruptcy attorney in 2015, but elected to not pursue that course of action. (Answer; Tr. 71-72) Concerning the delinquent debts, he stated that he made “tremendous progress” in addressing the indebtedness during 2017. (Tr. 61-62) He stated that he caught up on back taxes owed to state and federal tax authorities, vehicle payments, and mortgage loan payments for their rental properties. His progress slowed in 2018 due to a gap in pay related from his transition from a subcontractor to full-time employee. At present, Applicant stated he was current with his monthly rent payment and other living expenses, but was a couple of months behind on mortgage payments for the rental properties. (Tr. 69-71)

### **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>

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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).

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 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 ¶ 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; and

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

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

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

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.

Turning to the matters in mitigation, Applicant's financial problems are traceable to the failed investment in the 31-unit apartment complex in a neighboring state, which he bought in 2010 and sold about three years later in 2013. In considering this matter, I note that every financial investment (e.g., stocks, bonds, real estate, gold, silver, etc.) carries a certain level of risk. Some investments have more risk than others. Applicant assumed a fair degree of risk when he bought the apartment complex. He likely overextended himself given size of transaction, the size of the apartment complex, and the location of the apartment complex, which was hundreds of miles from his primary residence.

Nevertheless, the investment did not fail due to Applicant's mismanagement or neglect of the property. The investment failed due to problems with the next-door property, which spilled over and negatively impacted his property. Those circumstances were largely beyond his control. He acted reasonably under the circumstances by selling the property. Although he sold the failing investment property several years ago in 2013, the financial hangover persists to this day, as evidenced by the remaining eight delinquent accounts for more than \$136,000. Given these circumstances, the mitigating condition at AG ¶ 20(b) applies, in part, but Applicant does not receive full credit in mitigation.

It is too soon to tell if Applicant initiated and is adhering to "a good-faith effort" to resolve his substantial indebtedness. With that said, he receives credit for the progress he made in 2017 with back taxes, vehicle payments, and mortgage loans. He also receives credit for the remedial actions taken as reflected in Exhibits A, B, and C. But Applicant is still facing a small mountain of delinquent debt, more than \$136,000. It is hard to tell if he can formulate a realistic plan and then follow through on that plan to address his delinquent debts. At present, it is unlikely that Applicant will resolve the remaining delinquent debts in the foreseeable future. In light of the high-dollar amount and age of some of the debts, it is unlikely those debts will ever be paid. Given these circumstances, the mitigating condition at AG ¶ 20(d) does not fully apply in Applicant's favor.

Following *Egan* and the clearly consistent standard, I have doubts and concerns 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. In particular, I gave Applicant credit for his honorable military service and his many years of employment in the defense industry. Although Applicant presented some favorable evidence in mitigation, it was outweighed by the unfavorable evidence. I conclude that he has not 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:                      Against Applicant

Subparagraphs 1.a-1.d, 1.f, 1.g, 1.i, 1.j: Against Applicant

Subparagraphs 1.e, 1.h, 1.k:                      For Applicant

## **Conclusion**

It is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Eligibility denied.

Michael H. Leonard  
Administrative Judge