



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



In the matter of: )  
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----- ) ISCR Case No. 18-00976  
 )  
Applicant for Security Clearance )

**Appearances**

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

08/08/2019

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**Decision**

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LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny her eligibility for access to classified information. The evidence is not sufficient to mitigate her history of financial problems. She has not made a good-faith effort to resolve more than \$80,000 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 July 31, 2017. (Exhibit 1) This document is commonly known as a security clearance application. Thereafter, on April 12, 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 her 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 18, 2018. She provided handwritten responses on the SOR in which she admitted all the allegations. She also provided a one-page handwritten memorandum with explanations for the debts and proposed corrective actions. She 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 1-4. Applicant did not offer any documentary exhibits. Other than Applicant, no witnesses were called. The hearing transcript (Tr.) was received on December 14, 2018.

The record was kept open for approximately 30 days, until January 4, 2019, to provide Applicant an opportunity to submit any documentation she thought appropriate, with a focus on letters of recommendation and account statements for her student loans in collection. (Tr. 56-58) Applicant made a timely submission, by e-mail, on January 4, 2019, and the one-page letter of recommendation is admitted without objections as Exhibit A.

### **Findings of Fact**

Applicant is a 32-year-old employee who is seeking to obtain a security clearance for the first time. She is employed as a supplier-quality engineer for a large company in the defense industry. She has been so employed since 2017. Her annual salary is about \$71,000. (Tr. 34) Her formal education includes attendance at a private university from August 2005 to December 2009, when she was awarded a bachelor's degree in mechanical engineering. She also did some graduate work during 2016. She married in 2009. She and her husband have no children. Her husband works as a general laborer for a transportation company with take-home pay of about \$900 monthly. (Tr. 34)

Applicant's post-college employment history has been inconsistent. (Exhibit 1) It includes multiple jobs, periods of underemployment, and periods of unemployment as follows: (1) she worked as a caregiver from January 2010 to January 2011; (2) she worked as a contract engineer from January 2011 to June 2011; (3) she was unemployed from June 2011 to September 2011; (4) she worked as a mechanical data team member from September 2011 to April 2012; (5) she worked as an engineer from April 2012 to May 2013; (6) she was unemployed from May 2013 to September 2013; (7) she worked as a data-entry clerk from September 2013 to February 2014; (8) she was unemployed from February 2014 to April 2014; (9) she worked as a pizza-delivery driver from April 2014 to May 2014; (10) she worked as an engineer from May 2014 to June 2016; (11) she worked as an engineer from June 2016 to August 2016, when she was fired for attendance issues within the first 90 days of employment; (12) she was unemployed from August 2016 to October 2016; (13) she worked as a grocery-store clerk from October 2016 to February 2017; (14) she was unemployed from February 2017 to April 2017; and (15) she worked as kitchen staff at a restaurant from April 2017 until she began her current job in the defense industry in mid-2017.

The SOR alleges and Applicant admits a history of financial problems. In particular, the SOR concerns 17 delinquent accounts for a total of about \$95,000. Those delinquent accounts fall into three categories: (1) 11 medical collection accounts in amounts ranging from \$138 to \$5,790 for a total of about \$14,361; (2) 4 student loan accounts in collection for a total of about \$70,877; and (3) 2 collection accounts stemming from early termination of apartment leases for a total of about \$10,325. In addition to her admissions, the delinquent accounts are established by credit reports from 2017 and 2018. (Exhibits 2, 3, and 4)

Applicant has made no progress in resolving any of the 17 delinquent accounts. She did not present documentation to establish that any of those accounts were paid, settled, in a payment arrangement, in dispute, cancelled, forgiven, or otherwise resolved. All 17 delinquent accounts are unresolved.

In both her answer to the SOR and in her hearing testimony, Applicant attributed her financial problems to her inconsistent employment history. Concerning the medical collection accounts, she explained that those debts were incurred for necessary medical care when she was uninsured. She has health insurance with her current job, but otherwise was uninsured since aging-off her mother's health-insurance policy. (Tr. 28-29) Concerning the student loan accounts, she stated that that loans were at various times in forbearance, deferment, or income-based payment plans. (Tr. 39) She has not had contact with the student loan creditors in 2018. (Tr. 55) She noted that she has other student loan accounts that are in good standing, as reflected in Exhibit 4. (Tr. 45) Concerning the apartment leases, she explained she was unable to complete the full terms of the leases due to changes in employment. (Tr. 46-50) She and her husband are in good standing with their current monthly rent and other living expenses. (Tr. 50-51)

Applicant has about \$3,000 in savings in a checking account with a credit union. (Tr. 52-53) She participates in her employer's 401(k) plan. (Tr. 53) She has no other financial or investment accounts. Looking forward, she described a general plan to address her indebtedness by reaching out to her creditors with the hope of reaching affordable payment plans. (Tr. 54-55)

Applicant has a good employment record for her current job based on the highly favorable letter of recommendation submitted by a co-worker or supervisor or both. (Exhibit A) The letter described Applicant as diligent and motivated; with potential to be a candidate for a long career; showing great integrity; and overall, an exceptional employee with the highest standards who is suitable for a security clearance.

### **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 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. . . .

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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).

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

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(c) 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.

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.

With that said, I attach minimal security significance to the 11 medical collection accounts for a total of about \$14,361. Applicant incurred those debts for necessary medical care and treatment when she was uninsured. Such indebtedness does not indicate poor self-control, frivolous or irresponsible spending, living beyond her means, or questionable judgment. On that basis, the matters in SOR ¶¶ 1.c and 1.h through 1.q are decided for Applicant.

Turning to the matters in mitigation, the genesis of Applicant's financial problems is her inconsistent employment history, which includes multiple jobs and several periods of underemployment and unemployment. For the most part, these were circumstances largely beyond her control. She acted reasonably under the circumstances by seeking work wherever she could find it, to include working in jobs below her qualifications as a mechanical engineer. Given these circumstances, the mitigating condition at AG ¶ 20(c) applies, and Applicant receives credit in mitigation.

Applicant has not made "a good-faith effort" to resolve the six collection accounts stemming from student loans and broken apartment leases. Taken together, she is facing a small mountain of debt; about \$70,000 for the four student loan accounts in collection; and about \$10,325 for the two apartment leases in collection. Given her means and limited financial assets, it is unlikely that any of those debts will be paid,

settled, or in a payment arrangement in the foreseeable future. Although Applicant has faced difficulties since entering the workforce, she has simply made no progress in repaying her overdue creditors or otherwise resolving the debts, and it is my assessment that she is unlikely to do so. Given these circumstances, the mitigating condition at AG ¶ 20(d) does not 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. I gave particular consideration to the highly favorable letter of recommendation submitted on Applicant's behalf. Although Applicant presented some favorable evidence in mitigation, it was outweighed by the unfavorable evidence. I conclude that she has not met her ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant her 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.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d -- 1.g:	Against Applicant
Subparagraphs 1.h -- 1.q:	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