



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



In the matter of: )  
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----- ) ISCR Case No. 18-01832  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Tara Karoian, Esq., Department Counsel  
For Applicant: Shirin Asgari, Esq.

09/05/2019

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**Decision**

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LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for access to classified information. The conditions that resulted in his financial problems were largely beyond his control, and he acted responsibly under the circumstances. He also initiated and is adhering to a good-faith effort to repay his delinquent debts. The evidence is sufficient to mitigate his history of financial problems. 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 August 16, 2016. (Exhibit 1) This document is commonly known as a security clearance application. Thereafter, on July 6, 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 August 9, 2018. He admitted the six factual allegations, and he provided explanations and supporting documentation. He requested that his case be decided on the written record in lieu of a hearing. Subsequently, on or about October 22, 2018, he retained legal counsel and requested a hearing before an administrative judge. (Tr. 9)

The case was assigned to me on April 16, 2019. The hearing took place on June 11, 2019. Applicant appeared with counsel. Department Counsel offered documentary exhibits, which were admitted as Exhibits 1-4. Applicant offered documentary exhibits, which were admitted as Exhibits A-E. Other than Applicant, no witnesses were called. The hearing transcript (Tr.) was received on June 20, 2019.

The record was kept open until July 11, 2019, to provide Applicant an opportunity to submit additional documentation. Applicant made a timely submission, and the additional documents are admitted without objections as Exhibits F-J.

### **Findings of Fact**

Applicant is a 37-year-old employee who is seeking to retain a security clearance. He works as an incident-response analyst in a cyber-center. He has been so employed since August 2016. His formal education includes a high school diploma and some college. His employment history also includes two periods of unemployment: (1) from April 2016 to August 2016; and (2) from April 2009 to March 2010. The later period of unemployment followed his honorable discharge from active duty military service. (Exhibit F; Tr. 50-52) He served in the U.S. Army for approximately eight years during 2001-2009, which included deployments to both Afghanistan and Iraq. He received his initial security clearance for his military duties. Due to a service-connected injury to his back, the Department of Veterans Affairs determined he has a 40% disability, and he receives disability compensation of about \$730 monthly. (Tr. 52-53; Exhibit B) Applicant is married and there are two minor children of the marriage. Married in 2003 and separated in 2016, a divorce is likely to occur in the near future.

The SOR alleged and Applicant admitted a history of financial problems. In addition to his admissions, the six factual allegations in the SOR are established by the documentary evidence. (Exhibits 2-4) In particular, the SOR concerns a mortgage loan that went into default followed by foreclosure, as well as four charged-off accounts and two collection accounts for a total of about \$28,413.

Applicant attributed his financial problems to marital troubles. In the summer of 2015, he and his wife decided on an informal separation due to her alcohol abuse and extramarital affairs. They continued to live together, with their children, until early 2016 when she moved out of the marital home. That resulted in a decrease in household income, and Applicant was left with responsibility for their previously shared financial obligations. His wife had also assumed responsibility for the household finances,

including bill-paying. Since their separation, she has declined to provide Applicant any financial assistance to pay the debts they incurred while they were together. (Tr. 33-34) Recently, in May 2019, his wife agreed to the setting of a child-support arrears amount at zero and the court so ordered. (Exhibit D) Applicant continues to pay ongoing child support, via payroll withholding, at the rate of \$540 per month. (Tr. 40-41) He described his current relationship with his wife as “pretty amicable,” and they are both focused on their respective co-parent roles. (Tr. 39-40)

Turning to the matters in the SOR, the first concerns the mortgage loan that went into default followed by foreclosure. (Tr. 23-26; 42-43) Applicant and his wife bought the home in 2012, and the mortgage loan account was in good standing until the marital separation and decline in household income. He was unable to maintain the mortgage payments based solely on his income. Since the mortgage loan was a joint account, he asked his wife to sign a quit-claim deed but she refused. She also declined to participate in a state-sponsored save-our-home program. The property was foreclosed upon in 2017.

Turning next to the charged-off accounts, the \$11,587 charged-off account stems from a credit card account that Applicant used for both personal expenses and work-related expenses. (Tr. 26-30; 43) He entered into a payment arrangement with the creditor in November 2016. (Answer to SOR) He has made 30 monthly payments of \$139 per that arrangement, with the most recent payment in April 2019. (Exhibit C)

The \$6,819 charged-off credit account stems from a credit card account. (Tr. 30-33) Applicant entered into a payment arrangement with the creditor in July 2018. (Answer to SOR) He has made 11 monthly payments of \$50 per that arrangement, with the most recent payment in May 2019. (Exhibit C)

The \$4,838 charged-off account stems from a credit card account. (Tr. 33-35, 44) Applicant entered into a payment arrangement with the creditor in July 2018. (Answer to SOR) He has made nine monthly payments of \$50 per that arrangement, with the most recent payment in April 2019. (Exhibit C)

The \$3,891 collection account stems from a credit card account. (Tr. 36) The account was charged off and placed for collection with a law firm. In August 2018, Applicant agreed to make monthly payments of \$325 for 12 months. (Answer to SOR) Through May 2019, Applicant made 10 monthly payments per that arrangement. (Exhibit C) The account was paid in full for \$3,891 as of July 2019. (Exhibits E and I)

The \$1,278 collection account stems from a credit card account. (Tr. 36-37) The account has been in collection with a law firm since about July 2018, when Applicant agreed to make monthly payments of \$105 until the account was paid in full. (Answer to SOR) Through May 2019, Applicant made 10 monthly payments per that arrangement. (Exhibit C) The account was paid in full as of July 2019. (Exhibit J)

In addition to addressing the matters in the SOR, Applicant sought out and obtained financial counseling from an Army community counseling service, beginning in

about July 2018. He has developed and uses a written budget, which reflects a monthly surplus of more than \$1,000. (Exhibit B) He has a good record of employment based on performance reviews and favorable letters of recommendation. (Exhibits A, G, and H)

### **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 DOHA 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

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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.

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.

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 due to the circumstances surrounding his marital separation, a decline in household income, and the resulting inability to meet financial obligations incurred as a married couple. In addition, after moving out from the marital home, his wife refused to cooperate with attempting to resolve the mortgage loan, and she also declined to provide financial assistance to pay for their bills. Those circumstances were largely beyond his control. Applicant acted responsibly under the circumstances, as evidenced by the remedial actions taken to address his indebtedness. Given the circumstances, the mitigating condition at AG ¶ 20(b) applies in Applicant's favor.

Applicant has initiated and is adhering to a good-faith effort to resolve his indebtedness. He receives substantial credit for addressing all the delinquent debts in the SOR. He paid off two of the five delinquent accounts, and he has payment arrangements for the other three. He has made multiple monthly payments on the accounts. There is no apparent reason at this point to doubt his willingness and ability to continue with those payments. Moreover, it does not appear that Applicant was slow to act. He has been working on these matters since November 2016, when he made the first payment arrangement on a charged-off account. As his financial situation improved, he was able to address the others beginning in mid-2018. Taken together, his multiple monthly payments on several accounts establish a track record of adhering to a good-faith effort to resolve his indebtedness. Given the circumstances, the mitigating condition at AG ¶ 20(d) applies in Applicant's favor.

Applicant presented a good but less than perfect case in mitigation, but, as in all human affairs, perfection is not the standard. A security clearance case is not a debt-collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all the delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Here, I am persuaded that Applicant is making an honest effort to be financially responsible and repay his creditors. There are clear indications that he is repaying his creditors, and his financial problems appear to be under control. With additional time, it is probable that he will continue to make the agreed upon monthly payments and resolve the remaining three delinquent debts. Taking everything into account, Applicant demonstrated good judgment, reliability, and trustworthiness by persevering under difficult circumstances that were largely beyond his control. The financial considerations concern is mitigated.

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.f:

For Applicant

**Conclusion**

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

Michael H. Leonard  
Administrative Judge