



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



In the matter of: )  
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----- ) ISCR Case No. 18-02858  
 )  
Applicant for Security Clearance )

**Appearances**

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

06/03/2019

**Decision**

KATAUSKAS, Philip J., Administrative Judge:

Applicant contests the Defense Department’s intent to revoke his eligibility for access to classified information. He did not present sufficient evidence to explain, extenuate, or mitigate the security concern stemming from his problematic financial history. Accordingly, this case is decided against Applicant.

**Statement of the Case**

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86 format) on February 26, 2018. This document is commonly known as a security clearance application. On December 13, 2018, after reviewing the application and the information gathered during a background investigation, the Department of Defense Consolidated Adjudications Facility 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>1</sup> It detailed the factual reasons for

<sup>1</sup> This action was taken under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended, as well as Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive). In

the action under the security guideline known as Guideline F for financial considerations. Applicant answered the SOR on January 24, 2019, and requested a decision based on the written record without a hearing.

On February 22, 2019, Department Counsel submitted a file of relevant material (FORM).<sup>2</sup> The FORM was mailed to Applicant on February 25, 2019. He was given 30 days to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. Applicant received the FORM on March 6, 2019. Applicant did not respond to the FORM. The case was assigned to me on May 10, 2019.

### **Procedural Matters**

Included in the FORM were eight items of evidence, which are marked as Government Exhibits (GE) 1 through 8. Exhibits 1 through 3 and 5 through 8 are admitted into evidence without objection. Exhibit 4 is a report of investigation (ROI) summarizing Applicant's interview that took place during the July 2018 background investigation. The ROI is not authenticated, as required under ¶ E3.1.20 of the Directive.<sup>3</sup> Department Counsel's written brief includes a prominent paragraph advising Applicant that the summary was not authenticated and that failure to object may constitute a waiver of the authentication requirement. I am not, however, persuaded that a *pro se* applicant's failure to respond to the FORM, which response is optional, equates to a knowing and voluntary waiver of the authentication requirement. The record does not demonstrate that Applicant understood the concepts of authentication, waiver, and admissibility. It also does not demonstrate that he understood the implications of waiving an objection to the admissibility of the ROI. Accordingly, GE 4 is inadmissible, and I have not considered the information in the ROI.

### **Findings of Fact**

Applicant is 63 years old, married, previously divorced with three children. Applicant had four children, but he lost a child in 2006. He served in the U. S. Army from 1972 to 1987 and was honorably discharged. Applicant then earned an associate's degree in 2000 and a bachelor's degree in 2003. Since February 2017, he has been employed by a defense contractor. Before his current employment, Applicant was unemployed since November 2014.<sup>4</sup>

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addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on June 7, 2017 apply here.

<sup>2</sup> The file of relevant material consists of Department Counsel's written brief and supporting documentation which are identified as evidentiary exhibits in this decision.

<sup>3</sup> See *generally* ISCR Case No. 12-10933 (App. Bd. Jun. 29, 2016) (In a concurring opinion, Judge Ra'anani notes the historical concern about reports of investigation in that they were considered by some to present a heightened problem in providing due process in security clearance cases. Judge Ra'anani raises a number of pertinent questions about using an unauthenticated ROI in a non-hearing case with a *pro se* applicant.)

<sup>4</sup> GE 2 and GE 3.

Under Guideline F, the SOR alleges that Applicant filed a Chapter 13 bankruptcy in April 2011 that was dismissed at his request in December 2011. The SOR also alleges that Applicant filed a Chapter 7 bankruptcy in October 2012 that was discharged in March 2013.<sup>5</sup> The SOR also alleges six delinquent debts totaling \$16,712, of which \$4,076 are medical debts.<sup>6</sup> Applicant admitted those allegations with explanations.<sup>7</sup>

In his Answer, Applicant explained that he filed the first bankruptcy (Chapter 13) in an effort to reduce his indebtedness. He requested a dismissal when he recognized that he could not keep up with the plan payments. Applicant filed the second bankruptcy (Chapter 7) following his inability to pay for his home and a new vehicle. He described a series of events that stressed his family's finances during this period, including the loss of a child and the loss of his wife's income when she moved to another state to care for her father.<sup>8</sup> As noted, Applicant also was unemployed from November 2014 to February 2017.

Applicant admitted SOR ¶¶ 1.c, 1.d, 1.e, 1.f, and 1.g.<sup>9</sup> Applicant did not respond to SOR ¶ 1.h, which is a collection account supported by the evidence.<sup>10</sup> Applicant did not provide any documentation to support the claims made in his Answer.

### Law and Policies

It is well-established law that no one has a right to a security clearance.<sup>11</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>12</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.

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<sup>5</sup> GE 1 ¶¶ 1.a and 1.b.

<sup>6</sup> GE 1 ¶¶ 1.c through 1.h.

<sup>7</sup> GE 2.

<sup>8</sup> GE 2 ¶¶ 1.a and 1.b.

<sup>9</sup> GE 2 ¶¶ 1.c through 1.g. Applicant claims that SOR ¶ 1.c now has a balance of \$800, SOR ¶ 1.d is a duplicate, and SOR ¶ 1.f is being paid off (balance now \$218 or less). Applicant correctly pointed out that SOR ¶ 1.d alleged three medical debts in identical amounts with the same dates of last activity. The date of the report, date assigned, and date of balance are also identical. GE 5.

<sup>10</sup> GE 5, p. 4.

<sup>11</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).

<sup>12</sup> 484 U.S. at 531.

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>13</sup> An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.<sup>14</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>15</sup> The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>16</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>17</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>18</sup>

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.<sup>19</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>20</sup>

## Discussion

### Guideline F – Financial Considerations

Under Guideline F for financial considerations,<sup>21</sup> the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive indebtedness, financial problems, or difficulties. The overall concern is:

Failure 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.<sup>22</sup>

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<sup>13</sup> Directive, ¶ 3.2.

<sup>14</sup> Directive, ¶ 3.2.

<sup>15</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>16</sup> Directive, Enclosure 3, ¶ E3.1.14.

<sup>17</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>18</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>19</sup> *Egan*, 484 U.S. at 531.

<sup>20</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

<sup>21</sup> AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

<sup>22</sup> AG ¶ 18.

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.

In analyzing the facts of this case, I considered the following disqualifying and mitigating conditions or factors:

AG ¶ 19(a) inability to satisfy debts;

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

AG ¶ 20(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

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

AG ¶ 20(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

The evidence supports a conclusion that Applicant has a problematic financial history sufficient to raise a security concern under AG ¶¶ 19(a) and (c). Applicant has produced no documentation to support his answers to the SOR debts. In fact, the evidence is contrary to his answers. The Appeal Board has repeatedly held that applicants must present documentation to support their claims that debts have been resolved.<sup>23</sup> I conclude that except for one SOR debt, none of the Guideline F mitigating conditions apply.<sup>24</sup>

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<sup>23</sup> See, e.g., ISCR Case No. 07-10310 at 2 (App. Bd. Jul. 30, 2008) (it is reasonable for a judge to expect an applicant to present documentation about the satisfaction or other resolution of individual debts); ISCR Case No. 06-17520 at 2 (App. Bd. Sep. 20, 2007).

<sup>24</sup> I find that GE 5 supports Applicant's claim that SOR ¶ 1. d alleges duplicate debts. The correct debt should be \$1,108, not thrice that amount. AG ¶ 20(e) applies.

The record creates doubt about Applicant's reliability, trustworthiness, good judgment, and ability to protect classified 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 gave due consideration to the whole-person concept.<sup>25</sup> Accordingly, I conclude that Applicant 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**

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the SOR allegations:

Paragraph 1, Guideline F:                      Against Applicant

Subparagraphs 1.a-1.h:                      Against Applicant

### **Conclusion**

In light of the record as a whole, it is not clearly consistent with the national interest to grant Applicant access to classified information.

Philip J. Katauskas  
Administrative Judge

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<sup>25</sup> AG ¶ 2(a)(1)-(9).