



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 19-02170  
 )  
Applicant for Security Clearance )

**Appearances**

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

08/28/2020

**Decision**

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny him eligibility for access to classified information. His delinquent debts (three medical collection accounts) are due to uninsured medical expenses after suffering serious injuries in an automobile accident. He is making a reasonable and good-faith effort to resolve his indebtedness. 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 September 11, 2018. (Exhibit 1) This document is commonly known as a security clearance application. Thereafter, on July 26, 2019, 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 1, 2019. He admitted the factual allegations, and he requested a hearing before an administrative judge.

The case was assigned to me on September 30, 2019. The hearing took place as scheduled on December 2, 2019. 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-E. Other than Applicant, no witnesses were called. The hearing transcript (Tr.) was received on December 11, 2019.

The record was kept open until December 31, 2019, to provide Applicant an opportunity to submit additional documentation. He made a timely submission, and the additional documents (along with the e-mail correspondence) are admitted without objections as Exhibits F-J.

### **Findings of Fact**

Applicant is a 37-year-old employee who is seeking to obtain a security clearance for the first time. (Tr. 5-6) He works as a plumber's apprentice for a large company in the defense industry. He has worked for this company since September 2018. He was hired as a custodian before the company placed him into the plumber apprenticeship program. He has a good employment record with his current job. (Exhibits B and D) Before that, he had a part-time job from April 2010 to about December 2018. He worked both the full-time and part-time jobs for the last several months of 2018. He earned a high school diploma in 2000. He has been attending a community college for his current employment, for which he is reimbursed for tuition by his employer. (Exhibit I at 5) He obtained a commercial driver's license (CDL), and he is taking classes for his apprenticeship. (Exhibit J) He has never married and has no children.

Applicant earns \$15.86 per hour as a plumber's apprentice. (Exhibit I at 5) He expects his wages to increase as he progresses through the apprenticeship over three to four years. (Tr. 37-38) His total wages in 2018 were \$26,540 per his 2018 federal income tax return; his taxable income was \$15,325. (Exhibit I at 19) A written budget reflects a positive net monthly remainder of about \$150. (Exhibit I at 2-4) He described his financial situation as living paycheck-to-paycheck. (Tr. 41-42)

The SOR alleged and Applicant admitted a history of financial problems. In addition to his admissions, factual allegations in the SOR are established by the documentary evidence. (Exhibits 2-5) The SOR concerns three medical collection accounts in the amounts of \$50,109, \$1,538, and \$333 held by three different creditors. The three medical collection accounts are reflected in the October 2018 credit report. (Exhibit 3) The largest of the debts is reflected in all three credit reports, October 2018, September 2019, and November 2019. (Exhibits 3, 4, and 5) The two smaller debts do

not appear in the 2019 credit reports. (Exhibits 4 and 5) Other than the three medical collection accounts, the credit reports do not reflect any unfavorable financial information.

Applicant explained the indebtedness stems from uninsured medical expenses he incurred due to serious injuries he suffered in July 2013, when he was involved in a single-car accident caused by a flat tire and a vehicle rollover. (Tr. 28-29; Exhibit A) He was traveling from his state of residence to his former state of residence to see his father who was dying from cancer; his father passed shortly before the accident. Applicant suffered a cracked sternum, fractured ribs, a compound fracture of his left ankle, and a popped blood vessel in an eye. (Exhibit A) He was taken to a major hospital by medivac helicopter. He was uninsured at the time because as a part-time employee he was ineligible for his employer's health-insurance plan. He was out-of-work from his part-time job from about July 11, 2013, to December 2, 2013, but managed to get by with assistance from his employer, family, and friends. (Tr. 29; Exhibit A)

Applicant was unaware of the three medical collection accounts until he was confronted about them during the March 2019 background investigation. (Tr. 33; Exhibit 2) He paid in full the \$333 medical collection account in December 2019. (Exhibit G) He made a repayment arrangement with the creditor for the \$1,538 medical collection account; he has been paying \$60 monthly since September 2019; and the balance was \$1,257 as of December 2019. (Exhibit H) He applied in writing to have the \$50,109 medical collection account cancelled, forgiven, or reduced based on hardship or charity. (Exhibit I) He applied the first time in August 2019, but had to resubmit the application in September 2019.

### **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

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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.

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 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;

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<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.

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 here.

Turning to the matters in mitigation, Applicant's financial problems are due to uninsured medical expenses he incurred for medical care and treatment of his serious injuries suffered in the 2013 car accident. Once he became aware of the three medical collection accounts, he acted responsibly under the circumstances by taking remedial actions to resolve the debts. Given the circumstances, the mitigating condition at AG ¶ 20(b) applies in Applicant's favor.

Applicant is making a good-faith effort to resolve the medical collection accounts. He paid off one account, and he is making \$60 monthly installment payments on another account. The medical collection account for more than \$50,000 is clearly beyond his ability to repay, now and in the foreseeable future. So, he has taken a reasonable course of action by seeking to have the creditor either forgive, cancel, or reduce it to an amount he can realistically repay. He receives credit for taking these actions, which are well documented. (Exhibits F-I) 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 resolve his indebtedness. There are indications that his financial problems are under control. His overall financial situation is stable, as shown by the credit reports that show no unfavorable financial information other than the three medical collection accounts. It is probable that he will continue to make progress in resolving the two outstanding medical collection accounts. Taking everything into account, 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 his 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.c:	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