



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 19-02542  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Gatha Manns, Esq., Department Counsel  
For Applicant: *Pro se*

05/12/2021

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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 evidence is not sufficient to explain, extenuate, or mitigate his history of financial problems, which are unresolved and ongoing. 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 November 11, 2017. (Exhibit 3) This document is commonly known as a security clearance application. He provided additional information when interviewed in March 2019 during a background investigation. (Exhibit 6) Thereafter, on March 3, 2020, 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 March 17, 2020. He admitted 4 of the 16 SOR allegations; he did not provide explanatory remarks with his answer; nor did he provide supporting documentation. He requested a decision based on the written record in lieu of a hearing.

On April 20, 2020, Department Counsel submitted a file of relevant material (FORM). It consists of Department Counsel's written brief and supporting documentation, some of which are identified as evidentiary exhibits. The FORM was mailed to Applicant, who received it on April 30, 2020. He did not reply within 30 days of receipt of the FORM. The case was assigned to me on April 23, 2021.

### **Findings of Fact**

Applicant is a 63-year-old employee who is seeking eligibility for access to classified information for his job with a federal contractor. He works as a steward aboard a U.S. Navy ship. He has been so employed since 2017. He has not held a security clearance in the past according to his security clearance application. (Exhibit 3 at Section 25) He was unemployed during June-September 2016, but has otherwise had full-time employment since at least 2005. His employment history includes honorable military service on active duty with the Navy during 1976-1979. He has never married and has no children. His education history includes earning a certificate of completion for an 18-month culinary program in 2001.

The SOR alleges a history of financial problems consisting of 16 delinquent accounts in amounts ranging from \$88 to \$17,585 for a total of about \$27,608. The various accounts are described as past due, in collection, or charged off. In addition to his admissions for four accounts, the delinquent accounts are established by credit reports from 2019 and 2018. (Exhibits 4 and 5)

Applicant did not disclose or otherwise reveal any delinquent financial accounts when he completed his November 2017 security clearance application. (Exhibit 3 at Section 26)

During his March 2019 interview, Applicant described his finances as poor due to missed payments and a history of delinquent accounts. (Exhibit 6) He further stated that he was unable to confirm if the various delinquent accounts were his but he presumed they were. He acknowledged that he had not reviewed a credit report but had received collection letters about past-due accounts. He also acknowledged that for a long time he did not pay attention to his finances. Unbeknownst to him, he claimed that his former girlfriend had opened accounts in his name and charged on several of the accounts. He also stated that he hired a law firm to help him regain control of his finances, and that he had been on a payment plan with the law firm at the rate of \$260 monthly since June 2018.

Applicant did not present documentation showing that any of the debts in the SOR were paid, settled, entered into a repayment arrangement, cancelled, forgiven, or otherwise resolved in his favor. Likewise, he did not present documentation to establish the nature of the services he is receiving from the law firm. And he did not present documentation concerning the payment plan with the law firm.

### **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>

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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

## 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; and

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

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.

Applicant has not sufficiently explained, extenuated, or mitigated his history of financial problems, which are unresolved and ongoing. I have reviewed all of the mitigating conditions under Guideline F and conclude none are fully applicable. Applicant has done little to help himself, as shown by the lack of documentation in his answer to the SOR or his reply to the FORM. There is no reliable documentation to show that he has initiated a realistic plan to address the numerous delinquent debts. In particular, his claims that he has a law firm helping him and has been in a monthly repayment plan since June 2018 are unproven beyond his statements. Likewise, his attribution to his former girlfriend consists simply of his claim without any corroborating information.

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 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
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Subparagraphs 1.a -- 1.p:	Against Applicant
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### **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