



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 19-03748

**Appearances**

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

06/16/2021

**Decision**

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for access to classified information. He did not present sufficient evidence to explain, extenuate, or mitigate his history of financial problems. 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 May 17, 2018. (Exhibit 4) This document is commonly known as a security clearance application. He provided additional information when interviewed during a background investigation. (Exhibit 10) Thereafter, on April 8, 2020, after reviewing the available information, 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 in May 2020 and January 2021. He provided a supplemental answer to the SOR on March 3, 2021. His answers were mixed; he provided explanatory remarks; and he provided supporting documentation. He requested a decision based on the written record in lieu of a hearing.

On March 17, 2021, 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 herein. The FORM was mailed to Applicant on March 26, 2021; he received it on April 6, 2021. He timely replied to the FORM with a one-page memorandum and supporting documentation, which are admitted as Exhibit A. The case was assigned to me on May 27, 2021.

### **Findings of Fact**

Applicant is a 48-year-old employee who is seeking eligibility for access to classified information for his job with a federal contractor. He has a full-time job as a security assistant. He has been so employed since May 2018. Before that, he had a full-time job as a security site manager for about five years during 2013-2018. He has not held a security clearance in the past. (Exhibit 4 at Section 25) He is married, and he has an adult child and an adult stepchild. His educational history includes a high school diploma awarded in 1991. He attended two different technical schools; the first was during 2000-2001, and he earned a certificate in computer hardware; and the second was during 2007-2012, but he did not earn a certificate or degree. (Exhibit 10 at 1-2)

In his security clearance application, Applicant reported two periods of unemployment in the last decade. (Exhibit 4 at Section 13A) He was unemployed from September 2012 to March 2013, a period of about seven months. He was also unemployed for about two months from January 2012 to February 2012.

The SOR alleges a history of financial problems consisting of four delinquent accounts as follows: a charged-off private student loan in the amount of \$5,943; a \$20,071 balance due after repossession of an automobile; and two collection accounts for student loans with the U.S. Department of Education in the amounts of \$12,224 and \$17,413. In total, the SOR alleges indebtedness of about \$55,651.

In his answers, Applicant admitted the two federal student loans in collection. He denied (although essentially admitted) the charged-off private student loan, explaining the account now had a balance of \$0. And he denied (although essentially admitted) the \$20,071 delinquency, explaining it was paid off in November 2020. In addition to his admissions, the four delinquent accounts are established by a July 2018 credit report, which was obtained during his background investigation. (Exhibit 5) He did not disclose any delinquent accounts in his security clearance application, although he noted he had filed tax returns late and paid all penalties. (Exhibit 4 at Section 26) The current status of the four delinquent accounts is discussed below.

The July 2018 credit report described the private student loan as a charged-off account in the amount of \$5,934, and the account information was disputed by the consumer. (Exhibit 5 at 9) Applicant explained and provided reliable documentation that the account now has a \$0 balance because the debt was cancelled or forgiven as part of a nation-wide settlement agreement obtained by the U.S. Bureau of Consumer Financial Protection. (January 2021 Answer, Attachment A) The October 2020 letter from the creditor specifically states that Applicant is “no longer obligated to make any payment on your [private student] loan.” I find this account is resolved in Applicant’s favor.

The July 2018 credit report described the \$20,071 delinquent debt as a charged-off account, and the merchandise was taken back by grantor with a possible balance due. (Exhibit 5 at 10) The debt stems from a \$54,100 auto loan that resulted in repossession of the vehicle in May 2018. Applicant explained and provided reliable documentation that the account now has a \$0 balance. (May 2020 Answer; March 2021 Supplement Answer, Attachments for SOR ¶ 1.b) His paperwork shows he paid a total of \$1,400 over several months. The December 2020 letter from the creditor confirms that there are no further payments due on the account. Although it is unclear if Applicant paid off the debt in full or settled it for a lesser amount, it’s clear that the account has had a \$0 balance since December 2020. I find this account is resolved in Applicant’s favor.

The July 2018 credit report described the two federal student loans as collection accounts in the amounts of \$12,224 and \$17,413. (Exhibit 5 at 9) In an attempt to resolve the accounts, Applicant applied to have the Department of Education discharge the debts due to the closing of the educational institution he attended. (May 2020 Answer; January 2021 Answer; and March 2021 Supplement Answer, Attachments for SOR ¶¶ 1.c and 1.d) He submitted the discharge application in November 2020. He has yet to receive a reply to his discharge application.

In his April 2021 reply to the FORM, Applicant submitted reliable documentation showing that in March 2021 he entered into a rehabilitation agreement for his two defaulted federal student loans. (Exhibit A) The rehabilitation agreement calls for income-based repayment at the rate of \$27 per month for at least nine monthly payments beginning April 28, 2021, at which point his defaulted loans would be considered rehabilitated and eligible for a repayment plan. The paperwork from the Department of Education shows a total balance due of about \$32,243.

Applicant’s history of financial problems or difficulties is not limited to the four accounts discussed above. Because these matters are not alleged in the SOR, I have considered them for the limited purpose of evaluating Applicant’s evidence in mitigation. His financial problems date back to at least 2003, and are discussed below.

By 2003, Applicant’s overall financial situation was such that he sought relief by filing a voluntary Chapter 7 bankruptcy petition. (Exhibit 6) The purpose of a Chapter 7 case is to allow a debtor to obtain a fresh start, free from creditors and free from the pressures of excessive indebtedness. In November 2003, the bankruptcy court granted

Applicant a discharge, releasing him from any further personal liability for his pre-bankruptcy debts. (Exhibit 6)

In addition to the four delinquent debts in the SOR, the July 2018 credit report reflects four other collection accounts. (Exhibit 5 at 8-10) The first is a \$725 collection account for a charged-off credit card account. The second is a collection account, with a \$0 balance, that was settled for less than the balance in full. The third is a collection account, with a \$0 balance, that was settled for less than the balance in full. And the fourth is a collection account, with a \$0 balance, described as a paid charged-off account.

Applicant's financial history also includes tax problems, as he mentioned briefly in his 2018 security clearance application. (Exhibit 4 at Section 26) He provided a few more details during his 2018 background investigation. (Exhibit 10 at 3) He stated that he did not file income tax returns for 2004, 2007, 2008, and 2009. He further stated that he sought out professional assistance in 2017, which resulted in a plan to resolve back taxes.

### **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>

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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).

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 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 or difficulties that is sufficient to raise a security concern under Guideline F. The disqualifying conditions noted above apply here to the four delinquent accounts in the SOR.

Applicant has not sufficiently explained, extenuated, or mitigated his history of financial problems. I have reviewed all of the mitigating conditions under Guideline F and conclude none are fully applicable. Applicant has resolved two of the four delinquent accounts in the SOR. The two defaulted federal student loans were recently

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<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

entered into a rehabilitation agreement, with the first of nine \$27 monthly payments to be made by April 28, 2021. The length of Applicant's compliance with this agreement is of short duration. Accordingly, it is simply too soon to tell if he will adhere to the agreement.

Similarly, if Applicant satisfies the rehabilitation agreement, the loan servicer will calculate a new monthly payment based on the balance owed at the time of rehabilitation, and the monthly payment may substantially increase. (Exhibit A) The outstanding balance on the loans was more than \$30,000 as of March 2021. Given these circumstances, coupled with Applicant's history of financial problems or difficulties dating back to 2003, I have doubts about Applicant's ability or willingness or both to adhere to his plan to repay the defaulted student loans.

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
Subparagraphs 1.a -- b:	For Applicant
Subparagraphs 1.c -- d:	Against 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