



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



In the matter of: )  
 )  
----- ) ISCR Case No. 20-03151  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Eric C. Price, 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 March 12, 2020. (Exhibit 3) This document is commonly known as a security clearance application. He provided additional information when interviewed during a background investigation. (Exhibit 4) Thereafter, on November 25, 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 on December 2, 2020. His answers were mixed; he provided explanatory remarks in a three-page memorandum; and he also provided a one-page enclosure showing an employment termination in October 2015. He requested a decision based on the written record in lieu of a hearing.

On January 31, 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 23, 2021; he received it on April 23, 2021. He timely replied to the FORM with a one-page memorandum, which is 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 works full-time as a security officer. He has been so employed since January 2020. He has not held a security clearance in the past. (Exhibit 3 at Section 25) He is married, although he and his spouse are living separately while working on their marriage. He has no children. His educational history includes a high school diploma awarded in 1992. He also attended a state university for a time without earning a degree.

In his security clearance application, Applicant reported two periods of unemployment in the recent past. (Exhibit 3 at Section 13A) He worked for several years as an account manager for a technology company until he was laid off in October 2015, when the company moved a number of jobs overseas. (Answer at 7) He was then unemployed from October 2015 to November 2016, a period of about one year. He was hired as a data manager for a one-year project, which ran from November 2016 to November 2017. When the project ended, he was unemployed from November 2017 to February 2018, a period of about four months. He then transitioned his career to working in security, and he has worked continuously in this field since February 2018.

The SOR alleges a history of financial problems consisting of six delinquent accounts in amounts ranging from \$163 to \$13,105 for a total of about \$20,176. The delinquent accounts are described as in collection. He admitted with explanation the three collection accounts in SOR ¶¶ 1.c, 1.d, and 1.e. He denied with explanation the three collection accounts in SOR ¶¶ 1.a, 1.b, and 1.f. In addition to his admissions, the six delinquent accounts are established by credit reports from March 2020 and October 2020. (Exhibits 5 and 6)

Applicant disclosed the largest delinquent account for \$13,105 in his security clearance application. (Exhibit 3 at Section 26) He stated that he fell behind and defaulted on a car loan after he was laid-off from his job in October 2015. The vehicle was subject to voluntary repossession. Otherwise, he did not disclose any delinquent

accounts in his security clearance application. In his background investigation, his answer to the SOR, and his response to the FORM, Applicant points to the job layoff in October 2015 and the following one-year period of unemployment as the circumstances that resulted in his inability to satisfy his financial obligations.

Applicant has provided various explanations for the six delinquent accounts. But he has not provided any supporting documentation concerning the accounts. He has not presented reliable documentation (e.g., account statements, cancelled checks, correspondence from a creditor) showing that any of the accounts were paid, settled, entered into a repayment agreement, disputed, cancelled, forgiven, or otherwise resolved in his favor. Nor has he presented any supporting documentation to establish a reasonable plan to resolve the delinquent accounts. I find all six delinquent accounts in the SOR are unresolved.

### **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

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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).

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. Applicant fell behind on his financial obligations and was unable to pay certain creditors due to a job layoff in October 2015 and the following one-year period of unemployment.

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. In particular, the mitigating condition at AG ¶ 20(b)—concerning circumstances largely beyond one's control—does not apply here. Certainly, his job layoff and one-year period of unemployment were circumstances largely beyond his control. But he has not acted responsibly under the circumstances, because he has not provided any documentation to establish a good-faith effort to repay or otherwise resolve the six delinquent accounts.

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<sup>6</sup> Directive, Enclosure 3, ¶¶ E3.1.14 and E3.1.15

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 -- f:   | 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