



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



In the matter of: )  
 )  
----- ) ISCR Case No. 21-02078  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Erin P. Thompson, Esq., Department Counsel  
For Applicant: *Pro se*

04/08/2022

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**Decision**

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LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to revoke his eligibility for access to classified information. He did not present sufficient documentary 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, in April 2020. (Exhibit 3) The automated version of the SF 86 is the e-QIP. The SF 86 is commonly known as a security clearance application.

Applicant was interviewed on multiple occasions during the course of a 2020 background investigation. (Exhibit 4) He also replied to interrogatories in February 2021 and September 2021. (Exhibits 11 and 4, respectively) Thereafter, on or about November 5, 2021, after reviewing the available information, the DoD 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 in form and purpose to a complaint, which is the initial pleading that starts a civil action; in some states this pleading is known as a petition; and in criminal law it is a formal charge accusing a person of a criminal offense. Here, the SOR detailed the factual reasons for the action under the security guideline known as Guideline F for financial considerations.

Applicant timely answered the SOR; his answers were mixed with admissions and denials; and he also provided a few brief, handwritten explanations for his answers. He requested a decision based on the written record in lieu of a hearing before an administrative judge.

On November 29, 2021, Department Counsel submitted a file of relevant material (FORM). It consists of Department Counsel's written brief and supporting documentation. The FORM was received by Applicant on December 15, 2021. He timely replied with a two-page written response to the FORM, which is made part of the record as Exhibit A. The case was assigned to me on February 3, 2022.

### **Procedural Matters**

Based on an initial review of Applicant's reply to the FORM (Exhibit A), I decided on my own motion to grant Applicant an extension of time. I notified the parties via a February 18, 2022 e-mail. I took this action based on Applicant's written reply to the FORM in which he asserted a claim of racial discrimination, prejudice, or bias in that he was subject to racial profiling based on his status as an African American male. Department Counsel did not object to Applicant's reply to the FORM; nor did they address his claim of racial profiling. Given the seriousness of the allegation, I provided Applicant an opportunity to do the following: (1) request a hearing before an administrative judge by February 28, 2022; or (2) provide additional documentation in support of his case, including evidence to support his claim of racial profiling, by March 31, 2022.

Applicant did not request a hearing, but he made a timely submission of additional documentation on March 30, 2022. Those matters are made part of the record without objections as follows: (1) Exhibit B – a one-page document for tax year 2020 from the state tax authority, dated July 7, 2021; (2) Exhibit C – the first page of a letter from the IRS concerning tax year 2019, dated May 25, 2021; (3) Exhibit D – two pages from the IRS concerning an installment agreement and payment detail during September 2020 to September 2021 for tax years 2019 and 2020; (4) Exhibit E – the first page of a letter from the IRS concerning tax year 2020, dated August 3, 2021; and (5) Exhibit F – the first page of a loan-modification agreement between Applicant and a mortgage lender with an effective date of August 23, 2021. He previously provided some of these documents in response to interrogatories. (Exhibit 4)

Applicant did not submit documentation in support of his claim of racial profiling. Nor did he make additional argument. Accordingly, given the state of the record, his allegation of racial profiling has not reached the point where the facts are developed sufficiently to permit an intelligent and useful decision to be made, per the doctrine of ripeness.

### **Findings of Fact**

Applicant is a 60-year-old employee who is seeking eligibility for access to classified information for his job as a technical support engineer for a company in the defense industry. He has been employed by the same company since about September 2017 in State #1. As set forth below, he lived in State #2 from 2006 to late 2017. He was last granted a security clearance in 2014. (Exhibit 3, Section 25, and Exhibit 12) He married for the fourth time in 2017, his three previous marriages having ended in divorce. He has an adult child and an adult stepchild.

Applicant's educational background includes an associate degree awarded in 2012 and a bachelor's degree awarded in 2014 from the same university in State #2. Before entering the university, he worked in State #2 as a site manager during 2006-2010. (Exhibit 3) He was unemployed during the period of February 2010 to May 2014, while attending the university in State #2. After receiving his bachelor's degree, he worked as a federal civilian employee at a military installation in State #2 from May 2014 to September 2017, when he began his current job in State #1.

Applicant's employment history includes honorable military service. He served on active duty in the U.S. Navy for about 12 years during 1980-1992. He also served in the U.S. Army Reserve for about five years during 1996-2001. He described himself as a 100%-disabled Veteran with traumatic brain injury, memory loss, radiculopathy, degenerative disc disorder, shipwreck survivor, several gunshot wounds, post-traumatic stress disorder, and debilitating migraines. (Exhibit A) He receives disability compensation from the Department of Veterans Affairs (VA) on a monthly basis. (Exhibit 4 at 19)

The SOR alleges a history of financial problems or difficulties consisting of two Chapter 13 bankruptcy cases, noncompliance with state and federal tax obligations, four delinquent accounts in amounts ranging from \$145 to \$20,988 for a total of about \$41,090, and a past-due mortgage loan in the amount of \$34,907. These matters are discussed below.

#### **1. Chapter 13 bankruptcy cases—SOR ¶¶ 1.a and 1.b.**

Applicant's financial problems or difficulties date back to approximately November 2009, when he sought relief by filing a Chapter 13 bankruptcy case. (Exhibit 5) He filed the case in a federal bankruptcy court located in State #2, where he lived at the time. The bankruptcy court confirmed a repayment plan in February 2010; the plan was completed in May 2014; the court issued an order of discharge in June 2014; and the case was closed in July 2014. (Exhibit 5) Applicant did not recall the necessity of the

Chapter 13 bankruptcy case when he was interviewed about the topic during an August 2020 background investigation. (Exhibit 4 at 15) Based on my review of the Chapter 13 bankruptcy case docket text, it appears a refinance of real property (e.g., refinancing a mortgage loan) was involved in the case. (Exhibit 5)

Applicant filed a second Chapter 13 bankruptcy case in November 2019. (Exhibit 6) He filed the case in a federal bankruptcy court located in his state of current residence, State #1. It does not appear the bankruptcy court confirmed a repayment plan. Applicant explained he filed the case per the advice of legal counsel in an effort to avoid losing his home, because he had fallen behind on a mortgage loan and was attempting to obtain a loan modification from the mortgage lender. (Exhibit A; Exhibit 4 at 15-16) The bankruptcy court dismissed the case in response to the Chapter 13 Trustee's motion to dismiss in August 2020. The case was closed in October 2020.

## **2. Noncompliance with income-tax obligations—SOR ¶¶ 1.c, 1.d, and 1.e.**

The SOR alleges Applicant is in noncompliance with state income-tax obligations to file tax returns, as required, for tax years 2011-2016, and that he owes back taxes in the amount of about \$8,616 for those same tax years. The state tax authority is State #1, where he has worked and lived since about late 2017. Applicant denied the allegations in his answer to the SOR. In their brief, Department Counsel relies on a proof of claim filed by the State #1 tax authority in the 2019 Chapter 13 bankruptcy case. (Brief at 3; Exhibit 7) The December 2019 proof of claim asserts Applicant owes individual income tax due to non-filing estimated at \$1,436 per year for a total amount of \$8,616 for tax years 2011-2016. Note, there are no tax liens reflected in credit reports from September 2021, March 2021, and July 2020. (Exhibits 8, 9, and 10)

As set forth above, Applicant lived in State #2 from 2006 to late 2017. He was an unemployed student at a university in State #2 during 2010-2014. His time at the university occurred between periods of employment in State #2 during 2006-2010 and 2014-2017. Department Counsel acknowledged that Applicant "may have lived in [State #2] for some portion of that time period," but did not offer an argument to establish that Applicant was required to file income tax returns and pay income tax in a state in which he did not reside during the relevant tax years. Without substantial evidence Applicant was a bona fide part-year or nonresident taxpayer in State #1, it is difficult to find he was required by law to file tax returns and pay income tax in State #1 for the tax years in question. Given the conflicting evidence here, the allegations in SOR ¶¶ 1.c and 1.d are unproven.

The allegation in SOR ¶ 1.e concerns back taxes owed to the IRS in the amount of \$6,605 for tax years 2019 and 2020. Applicant admitted this allegation, in part, in his answer to the SOR. He also explained he was on a payment plan. He submitted documentation from the IRS showing the following: (1) sometime in 2020, he entered into an installment agreement with the IRS agreeing to make monthly payments; (2) during September 2020 to September 2021, he made ten installment payments for a total of \$2,009, which were applied to tax year 2019; (3) in May 2021, the IRS notified Applicant that his monthly payment was increasing to \$250 beginning in July 2021; (4)

in August 2021, the IRS notified Applicant that his installment agreement was revised to include the balance owed for tax year 2020 with the monthly payment remaining unchanged; and (5) as of September 2021, he owed \$195 in back taxes for tax year 2019 and \$4,054 in back taxes for tax year 2020. (Exhibits C, D, E, and 4 at 5-7) The same documents show he last made a payment of \$250 in July 2021. He did not provide documentation of payments made since July 2021.

**3. Four delinquent accounts—SOR ¶¶ 1.f, 1.g, 1.h, and 1.i.**

The SOR alleges Applicant has four delinquent accounts in amounts ranging from \$145 to \$20,988 for a total of about \$41,090. Two are collection accounts and two are charged-off accounts. Applicant admitted owing a \$20,988 charged-off account and denied the three other matters in his answer to the SOR. The four delinquent accounts are established by credit reports from September 2021 and March 2021. (Exhibits 8 and 9) Applicant did not provide documentary proof that any of the four accounts were paid, settled, in a repayment plan, disputed, cancelled, forgiven, or otherwise resolved.

**4. Past-due mortgage loan—SOR ¶ 1.j.**

The allegation here concerns a past-due mortgage loan in the amount of \$34,907. It was mentioned above during discussion of the 2019 Chapter 13 bankruptcy case. Applicant admitted having the mortgage loan but explained he was no longer past due in his answer to the SOR. He explained he fell behind on his mortgage loan payments after his spouse was injured on the job and was unable to return to employment. (Exhibit A) He filed the Chapter 13 bankruptcy case per the advice of his attorney to prevent a foreclosure. Over a lengthy period of time, Applicant sought a loan modification from his mortgage lender. He succeeded in that endeavor in August 2021. As proof, he submitted page 1 of 6 pages of the August 23, 2021 loan modification agreement. (Exhibit F) He did not submit documentation of monthly mortgage loan payments since August 2021. Nor did he submit a recent account statement for the mortgage loan. The most recent credit report from September 2021 shows the mortgage loan (a VA real estate mortgage) was included in the Chapter 13 bankruptcy case, the account has a balance of \$0, and is past due in the amount of \$0. (Exhibit 8 at 2)

Concerning his overall finances, Applicant provided a pay statement from February 2021 that reflects a biweekly base rate of \$2,724, which is about \$70,000 annually. (Exhibit 11 at 5) Note, there are no tax liens, garnishments, or similar withholdings reflected in the pay statement. It does reflect a deduction of about \$65 for an unspecified loan. During his background investigation, Applicant stated that he receives monthly disability compensation from the VA in amounts ranging from \$1,531 to \$1,884. (Exhibit 4 at 19) At the high end, that is \$22,608 in annual tax-free income; at the low end it's \$18,372.

## 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 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> Substantial evidence means “evidence that a reasonable mind could accept as adequate to support a conclusion; evidence beyond a scintilla.”<sup>5</sup> Substantial evidence is a lesser burden than both clear and convincing evidence and preponderance of the evidence, the latter of which is the standard applied in most civil trials. It is also a far lesser burden than evidence beyond a reasonable doubt, the norm for criminal trials.

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>6</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>7</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> *Black’s Law Dictionary* 640 (Bryan A. Garner ed., 9<sup>th</sup> ed., West 2009).

<sup>6</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>7</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 conditions as most pertinent:

AG ¶ 19(a) inability to satisfy debts;

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

AG ¶ 19(f) failure to file or fraudulently filing annual federal, state, or local income tax returns, or failure to pay annual federal, state, or local income tax as required.

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. With that said, his financial problems are not as problematic as they may appear in the SOR. To his credit, he completed the court-ordered repayment plan for the 2009 Chapter 13 bankruptcy case, which ended with a discharge in 2014. The relatively recent 2019 Chapter 13 bankruptcy case was due to the past-due mortgage loan, which is a common legal strategy to prevent foreclosure. The allegations of noncompliance with the State #1 tax authority are unproven. He reduced the amount of back taxes owed to the IRS from \$6,605 to \$4,250 as of September 2021, a reduction of about 36%. Moreover, Applicant succeeded in obtaining a loan modification of the mortgage loan, although he could have done more to document that fact. What's remaining is not minor, however, as there are four unresolved delinquent accounts for more than \$40,000. It appears he has taken little to no remedial action on those debts. The disqualifying conditions noted above apply.

I also considered the mitigating conditions as set forth in AG ¶ 20. Applicant receives credit for his efforts to repay back taxes owed to the IRS via an installment payment agreement. He reduced the amount owed by about 36%, a substantial reduction. See AG ¶ 20(d) and AG ¶ 20(g) He is also due credit for his sustained efforts to obtain a loan modification for his past-due mortgage loan. See AG ¶ 20(d) And he receives credit in mitigation because of the loss of his spouse's income due to a work-related injury. Applicant claimed the loss of income led to the past-due mortgage loan, which resulted in the most recent bankruptcy case. See AG ¶ 20(b) All these matters weigh in his favor.

Nevertheless, the four delinquent accounts for more than \$40,000 are wholly unresolved. Likewise, there are no prospects that Applicant will take steps to resolve them in the near future. What's missing here is a track record of repayment of those four delinquent accounts. So despite his efforts, Applicant has too much wholly unresolved delinquent debt to justify a favorable clearance decision. Accordingly, the Guideline F matter is decided against Applicant.

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. In doing so, I gave Applicant substantial credit for his years of honorable military service and for his status as a 100%-disabled Veteran, for which I have respect and appreciation. 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 – 1.e:	For Applicant
Subparagraphs 1.f – 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant

### **Conclusion**

It is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. National security eligibility is denied.

Michael H. Leonard  
Administrative Judge