



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 21-02553  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Andre M. Gregorian, Esq., Department Counsel  
For Applicant: *Pro se*

05/18/2022

**Decision**

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for access to classified information due to an unpaid judgment of more than \$40,000. He did not present sufficient evidence to mitigate the security concern. 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 March 2021. (Exhibit 2) 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 during the course of a 2021 background investigation. (Exhibit 8) Thereafter, on December 28, 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 an offense. Here, the SOR detailed the factual reasons for the action under the security guideline known as Guideline F for financial considerations.

Applicant answered the SOR on January 28, 2022. He admitted the sole factual allegation made in the SOR, and he provided a one-page memorandum in explanation. He also requested a clearance decision based on the written record in lieu of a hearing.

On February 17, 2022, Department Counsel submitted a file of relevant material (FORM). It consists of Department Counsel's written brief and supporting documentation. The FORM was mailed to Applicant, who received it March 10, 2022. His reply to the FORM was received on March 16, 2022, and consists of a brief one-page memorandum and six pages of supporting documentation. Those matters are made part of the record as Exhibit A. The case was assigned to me May 3, 2022.

### **Findings of Fact**

Applicant is a 64-year-old employee who is seeking to obtain a security clearance, although he has held a clearance in the past. He has a job as an engineer for an aerospace company in the defense industry. He has worked for the same company since about 1988. He had a break in employment beginning in June 2017, when he accepted a voluntary layoff with severance pay, until about January 2021, when he resumed employment with the same company. He has no previous military service. He earned a bachelor's degree in 1996. He married in 1995, and he has two adult children. He and his spouse have lived apart since August 2015. They entered into a mediated property settlement agreement and stipulation in January 2019. (Exhibit 4)

The SOR concerns a single delinquent debt, an unpaid judgment in the amount of \$45,235 obtained against Applicant by his spouse. (Exhibits 5 and 6) He admitted the allegation in his answer to the SOR. It is also established by documentary evidence. (Exhibits 3-8) In April 2020, the court awarded a judgment to his spouse in the amount of \$35,500 representing funds due her from his voluntary investment plan (VIP) held with his employer. The judgment was based on Applicant's unilateral actions of liquidating all funds from his employer's retirement and VIP accounts resulting in insufficient funds to provide his spouse monies as agreed in the parties' property settlement agreement. (Exhibit 5 at 2) Per the court order, judgments of \$35,500 and \$6,500 (previously entered in December 2019) were consolidated for a total judgment of \$42,500. By June 2021, the remaining judgment balance was \$45,235. (Exhibit 6)

In his answer to the SOR, Applicant explained that the legal settlement agreement meeting and the aftermath was an emotional and trying event for him. Financially, it left him with few resources and he was then unemployed due to the layoff.

He used what he had left in his employer accounts to pay living expenses and federal income tax due for tax year 2018 of nearly \$20,000, of which his spouse had agreed to pay half. He stated he paid the balance due and his spouse has not repaid him her half of the tax bill. He stated that he has a long history of financial responsibility, and he has held a security clearance in the past without a serious security violation. He also stated he would never compromise his security responsibilities for financial gain. In reply to the FORM, given his return to work, he stated that he now has an opportunity to take care of the debt. He presented six paystubs from various periods in 2021 showing his wages were garnished in the total amount of about \$4,700. (Exhibit A) Otherwise, he did not present documentation showing he had entered into a repayment agreement on the judgment or had otherwise made payments on the judgment.

### **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.

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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).

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>

## 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(b) unwillingness to satisfy debts regardless of the ability to do so; and

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 [person] acted responsibly under the circumstances.

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<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.

The evidence supports a conclusion that Applicant has a large unpaid judgment that he is unable or unwilling to pay, which is sufficient to raise a security concern under Guideline F. The disqualifying conditions noted above apply here.

It's obvious that Applicant's financial problem (e.g., the unpaid judgment) resulted from a combination of a job layoff and a marital separation. Had Applicant remained continuously employed, happily married, or both, it is highly unlikely that the financial problem would have occurred. But it did. And so the question is whether Applicant has taken sufficient action to resolve the unpaid judgment owed to his spouse. His wages have been subject to garnishment, but otherwise he has not made voluntary payments on the debt. Nor has he established a repayment plan in an effort to pay down the debt over time. It does not appear he has much enthusiasm or motivation to do so, and perhaps that's understandable given the origin of the debt. Nevertheless, the evidence does not support a conclusion that Applicant has acted responsibly under the circumstances. In other words, there is no evidence of a reasonable plan to resolve the debt and concomitant conduct by Applicant. The mitigating condition at AG ¶ 20(b) applies in part, but it is not sufficient to mitigate the security concern stemming from the remaining judgment balance of about \$45,000.

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
Subparagraph 1.a:	Against 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