



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 12-05433  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Gregg Cervi, Esq., Department Counsel  
For Applicant: *Pro se*

06/22/2015

**Decision**

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny him a security clearance to work in the defense industry. He has a history of financial problems or difficulties dating back to 2009, when he defaulted on a mortgage loan due to a business failure in 2008 during the economic crisis. The house was in foreclosure status for several years until it was sold in early 2014. The mortgage lender issued Applicant a Form 1099-C thereby cancelling the deficiency balance. In addition, he submitted sufficient documentation to resolve four medical collection accounts for a total of \$1,923. He also submitted documentation showing that his overall financial situation is stable and he is not overextended. He met his burden to present sufficient evidence to explain and mitigate the financial considerations security concern. Accordingly, this case is decided for Applicant.

## Statement of the Case

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86 Format) on January 14, 2012.<sup>1</sup> After reviewing the application and information gathered during a background investigation, the DOD,<sup>2</sup> on October 16, 2014, 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.<sup>3</sup> The SOR is similar to a complaint. It detailed the reasons for the action under the security guideline known as Guideline F for financial considerations. He answered the SOR on November 15, 2014, and requested a hearing.

The case was assigned to me on February 25, 2015. The hearing was held as scheduled on March 23, 2015. Department Counsel offered Exhibits 1–4, and they were admitted. Applicant offered Exhibits A–I, and they were admitted. The hearing transcript (Tr.) was received on March 31, 2015.

The record was kept open until April 20, 2015, to provide Applicant an opportunity to submit additional documentation. Those matters (to include his explanatory e-mails) were timely submitted and they are admitted as Exhibits J–S.

## Findings of Fact

Applicant is a 42-year-old storage consultant for a technology company. He is seeking to obtain a security clearance for the first time. He has worked for his current employer since 2008. Before that, he worked as an account support manager for a technology company during 1996–2008.

The SOR alleged five delinquent accounts consisting of a past-due mortgage loan in the amount of \$130,385, with a balance of \$290,297, and four medical collection accounts for a total of \$1,923. Applicant's adverse financial history dates to the 2008–2009 period when he experienced a business failure (with no connection to his employment) that in time led to defaulting on the mortgage loan for his residence. A brief discussion of the business, its failure, and the subsequent mortgage default and foreclosure follows below.

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<sup>1</sup> Exhibit 1 (this document is commonly known as a security clearance application).

<sup>2</sup> The SOR was issued by the DOD Consolidated Adjudications Facility, Fort Meade, Maryland. It is a separate and distinct organization from the Defense Office of Hearings and Appeals, which is part of the Defense Legal Services Agency, with headquarters in Arlington, Virginia.

<sup>3</sup> This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply here. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

In 2007, Applicant opened a computer-related business.<sup>4</sup> The business plan called for providing a place for computer gamers to gather and compete against each other face-to-face and in large numbers as opposed to playing from home. Applicant described it as a gamers' lounge. Applicant was interested in providing a safe location for gamers (primarily teenage boys) rather than spending time alone at home or on the street. Applicant made money by charging an hourly fee as well as concession sales.

Applicant used \$135,000 to start the business, consisting of \$35,000 of his own money, \$50,000 obtained by an home-equity line-of-credit (HELOC), and a \$50,000 bank loan or investment. The business was hit hard by the economic crisis that began in 2008 as his customers no longer had discretionary money to spend. Applicant decided to close and liquidate the business by April 2008. Tax paperwork from 2009 shows the business had a loss of nearly \$34,000.<sup>5</sup>

By 2009, Applicant had defaulted on the mortgage loan. The value of his house decreased substantially and he was upside down on the mortgage loan. He was in contact with the lender in an effort to resolve the situation, including a short sale, but was unsuccessful. A January 2012 credit report shows the mortgage loan had a high balance of \$295,535, a current balance of \$290,297, a past-due balance of \$70,538, was past due more than 180 days, and foreclosure proceedings had been initiated.<sup>6</sup> A December 2013 credit report shows the mortgage loan had a past-due balance of \$130,385 and that foreclosure proceedings had started.<sup>7</sup>

Applicant vacated the house in about December 2013,<sup>8</sup> and the house was sold in a foreclosure sale in February 2014.<sup>9</sup> The mortgage lender issued a Tax Year 2014 Form 1099-C to Applicant showing the following: (1) date of event 04/23/2014; (2) amount of debt discharged \$174,797; and (3) fair market value of the property \$115,500.<sup>10</sup> The effect of the Form 1099-C was to cancel the deficiency balance.

Applicant had a number of medical collection accounts, some of which were resolved before the SOR was issued. He speculated that he did not receive the medical

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<sup>4</sup> Tr. 29–37; Exhibit A.

<sup>5</sup> Exhibit A.

<sup>6</sup> Exhibit 2.

<sup>7</sup> Exhibit 3.

<sup>8</sup> Tr. 55.

<sup>9</sup> Exhibit 4 (notice of sale document).

<sup>10</sup> Exhibit O.

bills due to his employer changing the provider of his health care insurance.<sup>11</sup> The four medical collection accounts in the SOR are discussed briefly below.

The \$99 medical collection account in SOR ¶ 1.a is resolved. This debt appears in the December 2013 credit report. Applicant submitted documentation showing that there was a billing error and the remaining balance was paid-in-full in January 2014.<sup>12</sup>

The \$190 medical collection account in SOR ¶ 1.c is resolved. This debt appears in the January 2012 credit report, but not in the December 2013 credit report. Applicant was unable to provide documentation from the creditor, but he provided sufficient information of his communications with the creditor to show that the debt is satisfied.<sup>13</sup>

The \$905 medical collection account in SOR ¶ 1.d is resolved. This debt appears in the January 2012 credit report, but not in the December 2013 credit report. Applicant submitted documentation showing that the debt was cancelled or forgiven.<sup>14</sup>

The \$729 medical collection account in SOR ¶ 1.e is resolved. This debt appears in the January 2012 credit report, but not in the December 2013 credit report. Applicant submitted documentation showing that the debt was cancelled or forgiven.<sup>15</sup>

In addition to the four medical collection accounts in the SOR, Applicant submitted documentation showing that he resolved about eight other medical collection accounts.<sup>16</sup>

Applicant submitted documentation about his overall financial situation as follows: (1) he has three credit card accounts with total available credit of more than \$13,000 with current balances of \$0; (2) he has a checking account balance of \$10,598; (3) he has a credit score of 699; (4) he has investment accounts of about \$153,000; and (5) he has a savings account balance of about \$29,000.<sup>17</sup> He stated that his current annual base salary is about \$116,000 with a bonus of \$10,000 to \$25,000, and that he has not made less than \$130,000 in the past several years.<sup>18</sup>

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<sup>11</sup> Tr. 28–29.

<sup>12</sup> Exhibit R.

<sup>13</sup> Exhibits J, L, M, and S.

<sup>14</sup> Exhibits L, M, and P.

<sup>15</sup> Exhibits L, M, and Q.

<sup>16</sup> Exhibits 4, B, C, and N.

<sup>17</sup> Exhibits E–I.

<sup>18</sup> Tr. 49.

## Law and Policies

It is well-established law that no one has a right to a security clearance.<sup>19</sup> As noted by the Supreme Court in *Department of Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>20</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.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.<sup>21</sup> An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.<sup>22</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>23</sup> The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>24</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>25</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>26</sup>

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>27</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>28</sup>

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<sup>19</sup> *Department of 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>20</sup> 484 U.S. at 531.

<sup>21</sup> Directive, ¶ 3.2.

<sup>22</sup> Directive, ¶ 3.2.

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

<sup>24</sup> Directive, Enclosure 3, ¶ E3.1.14.

<sup>25</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>26</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>27</sup> *Egan*, 484 U.S. at 531.

<sup>28</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

The AG set forth the relevant standards to consider when evaluating a person's security clearance eligibility, including disqualifying conditions and mitigating conditions for each guideline. In addition, each clearance decision must be a commonsense decision based upon consideration of the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept. The Government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.<sup>29</sup> Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

### **Discussion**

Under Guideline F for financial considerations,<sup>30</sup> 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.<sup>31</sup> The overall concern is:

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 information.<sup>32</sup>

The concern is broader than the possibility that a person might knowingly compromise classified 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 information.

The evidence supports a conclusion that Applicant has a history of financial problems or difficulties. Taken together, the evidence indicates inability or unwillingness

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<sup>29</sup> Executive Order 10865, § 7.

<sup>30</sup> AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

<sup>31</sup> ISCR Case No. 95-0611 (App. Bd. May 2, 1996) (It is well settled that "the security suitability of an applicant is placed into question when that applicant is shown to have a history of excessive indebtedness or recurring financial difficulties.") (citation omitted); and see ISCR Case No. 07-09966 (App. Bd. Jun. 25, 2008) (In security clearance cases, "the federal government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner.") (citation omitted).

<sup>32</sup> AG ¶ 18.

to satisfy debts<sup>33</sup> and a history of not meeting financial obligations<sup>34</sup> within the meaning of Guideline F.

In mitigation, I have considered six mitigating conditions under Guideline F,<sup>35</sup> and I have especially considered the following as most pertinent:

AG ¶ 20(b) the conditions that resulted in the financial problems were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or death, divorce, or separation), and the [person] acted responsibly under the circumstances;

AG ¶ 20(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved and is under control; and

AG ¶ 20(d) the [person] initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's main financial problem, the past-due mortgage loan that went into foreclosure, was connected to the business failure, which was a circumstance largely beyond his control. He acted responsibly under difficult circumstances by quickly closing and liquidating the business before he incurred a greater loss. The mortgage loan was resolved via the foreclosure sale and the mortgage lender then elected to cancel the deficiency balance. The remaining four medical collection accounts were resolved by payment or were forgiven or cancelled. He also resolved several other medical collection accounts.

At present, it is apparent the delinquent accounts in the SOR are resolved and under control based, in part, on Applicant's good-faith effort to repay creditors. Moreover, I am not concerned that Applicant will have a recurrence of similar financial problems, because he is financially stable and not overextended. He knows how to earn money, save money, and invest money. In other words, he's financially savvy and unlikely to make similar mistakes in the future.

Applicant met his burden to present sufficient evidence to explain and mitigate the financial considerations security concern. I have no doubts about his reliability, trustworthiness, and good judgment. 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 gave due consideration to the whole-person concept.<sup>36</sup>

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<sup>33</sup> AG ¶ 19(a).

<sup>34</sup> AG ¶ 19(c).

<sup>35</sup> AG ¶ 20(a)–(f).

<sup>36</sup> AG ¶ 2(a)(1)–(9).

Accordingly, I conclude that he has 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 as follows:

Paragraph 1, Guideline F:	For Applicant
Subparagraphs 1.a–1.e:	For Applicant

### **Conclusion**

In light of the record as a whole, it is clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Eligibility is granted.

Michael H. Leonard  
Administrative Judge