



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 13-00513
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric H. Borgstrom, Esq., Department Counsel  
For Applicant: *Pro se*

05/16/2014

**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 did not present sufficient evidence to mitigate the financial considerations security concern stemming from his ongoing financial problems. Accordingly, this case is decided against Applicant.

**Statement of the Case**

On January 24, 2014, the Department of Defense (DOD) sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant or continue access to classified information.<sup>1</sup> The SOR is similar to a complaint, and it detailed the reasons for the

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<sup>1</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

action under the security guidelines known as Guideline F for financial considerations and Guideline E for personal conduct.

Applicant answered the SOR on February 20, 2014. Neither Applicant nor Department Counsel requested a hearing, and so, the case will be decided on the written record.<sup>2</sup>

On March 25, 2014, Department Counsel submitted all relevant and material information that could be adduced at a hearing.<sup>3</sup> This so-called file of relevant material (FORM) was mailed to Applicant, who received it April 1, 2014; the FORM included a copy of the Directive. Applicant has not replied to the FORM. The case was assigned to me May 14, 2014.

### **Ruling on Evidence**

Exhibit 8 is a report of investigation from the background investigation of Applicant. The six-page document is a summary of an interview of Applicant on October 11, 2013. Under the rules that govern these cases, a report of investigation may be received and considered as evidence when it is authenticated by a witness.<sup>4</sup> Although Applicant, who is representing himself, has not raised this issue, I am raising it *sua sponte*. Exhibit 8 is not authenticated in any way, and Department Counsel has not put forth an argument to support its admissibility. Accordingly, it is not admissible and I have not considered it.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted having three delinquent debts for a total of about \$13,000, and he denied intentionally making a false statement on his security clearance application by not reporting that two of those three debts were turned over to a collection agency. His admissions are accepted, adopted, and incorporated as findings of fact.

Applicant is a 39-year-old employee who is seeking to obtain a security clearance for his job as a refueller at a major shipyard. To that end, he submitted a security clearance application in July 2013.<sup>5</sup> His employment history includes the following: (1)

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replace the guidelines in Enclosure 2 to the Directive.

<sup>2</sup> Directive, Enclosure 3, ¶ E3.1.7.

<sup>3</sup> The file of relevant material consists of Department Counsel's written brief and supporting documents, some of which may be identified as evidentiary exhibits in this decision.

<sup>4</sup> Directive, Enclosure 3, ¶ E3.1.20; see ISCR Case No. 11-13999 (App. Bd. Feb. 3, 2014) (the Appeal Board restated existing caselaw that a properly authenticated report of investigation is admissible).

<sup>5</sup> Exhibit 4.

working full-time as a machinist during 2001–2009; (2) a period of unemployment of less than one year during 2009–2010; (3) working full-time as a stacker at a retail establishment during 2010–2011; and (4) working full-time as a refueller at a major shipyard since March 2011.

There is substantial evidence to support the SOR allegations that Applicant has a history of financial problems. His financial problems date back to at least 2002.<sup>6</sup> The SOR alleges and Applicant does not dispute that he currently has three delinquent debts for a total of about \$13,000. The debts are further established by credit reports from August 2013 and January 2014.<sup>7</sup> The debts are unresolved, as Applicant has not presented any documentation showing they are paid, settled, in a payment plan, cancelled, forgiven, or otherwise resolved.

Applicant did not disclose the two collection accounts alleged in SOR ¶¶ 1.a and 1.b. for \$8,713 and \$3,683, respectively, in his July 2013 security clearance application.<sup>8</sup> In his answer to the SOR, he explained the omission as follows:

I did not intentionally falsify any documents. I thought that they [the delinquent debts] would be paid off by now. I was trying to work out some settlement for [SOR] 1.a and 1.b, but I could not afford the lump-sum for the first payments. I am continuing to work something out with them.

### **Law and Policies**

It is well-established law that no one has a right to a security clearance.<sup>9</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>10</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>11</sup> An

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<sup>6</sup> Exhibit 7.

<sup>7</sup> Exhibits 5 and 6.

<sup>8</sup> Exhibit 4.

<sup>9</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>10</sup> 484 U.S. at 531.

<sup>11</sup> Directive, ¶ 3.2.

unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.<sup>12</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>13</sup> The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>14</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>15</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>16</sup> In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>17</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>18</sup>

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>19</sup> Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

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<sup>12</sup> Directive, ¶ 3.2.

<sup>13</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>14</sup> Directive, Enclosure 3, ¶ E3.1.14.

<sup>15</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>16</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>17</sup> *Egan*, 484 U.S. at 531.

<sup>18</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

<sup>19</sup> Executive Order 10865, § 7.

## Discussion

Under Guideline F for financial considerations,<sup>20</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>21</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>22</sup>

Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information within the defense industry.

Applicant's unfavorable financial history—the three delinquent debts that are unresolved—indicates inability or unwillingness to satisfy debts<sup>23</sup> and a history of not meeting financial obligations.<sup>24</sup> The facts are more than sufficient to establish these two disqualifying conditions.

There are six mitigating conditions under Guideline F.<sup>25</sup> I have considered all six in light of the facts and circumstances here, and none, individually or in combination, are sufficient to explain, extenuate, or mitigate the security concern. The available information shows that Applicant has taken little affirmative action to resolve his delinquent debts. His promises to pay in the future and his good intentions are not sufficient to apply any of the mitigating conditions.

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

<sup>21</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>22</sup> AG ¶ 18.

<sup>23</sup> AG ¶ 19(a).

<sup>24</sup> AG ¶ 19(c).

<sup>25</sup> AG ¶¶ 20(a)–(f).

With that said, a security clearance case is not aimed at collecting debts or enforcing tax laws.<sup>26</sup> Rather, the purpose is to evaluate an applicant's judgment, reliability, and trustworthiness consistent with the security guidelines in the Directive. In evaluating Guideline F cases, the Appeal Board has established the following standard:

The Board has previously noted that the concept of a meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payments of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.<sup>27</sup>

Based on the available evidence, Applicant has not taken enough significant actions to mitigate the security concern under Guideline F. In light of the facts and circumstances here, the record evidence presents uncertainty, and that uncertainty equates to doubt about Applicant's fitness for access to classified information.

Under Guideline E for personal conduct, the concern is that "[c]onduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information."<sup>28</sup> In addition to those general matters, "[o]f special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process."<sup>29</sup> A statement is false when it is made deliberately (knowingly and willfully). An omission of relevant and material information is not deliberate if, for example, the person genuinely forgot about it, inadvertently overlooked it, misunderstood the question, or genuinely thought the information did not need to be reported.

Here, the SOR alleges that Applicant falsified his July 2013 security clearance application by failing to disclose two collection accounts. I am not persuaded that

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<sup>26</sup> ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

<sup>27</sup> ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotations omitted).

<sup>28</sup> AG ¶ 15.

<sup>29</sup> *Id.*

Applicant deliberately omitted, concealed, or falsified material facts when answering the relevant question. Based on his explanation noted in the findings of fact, Applicant has an unsophisticated understanding of the process, and I do not believe he was endeavoring to hide or misrepresent his adverse financial record.

After weighing the relevant disqualifying and mitigating conditions and evaluating the evidence in light of the whole-person concept,<sup>30</sup> I conclude Applicant did not present sufficient evidence to explain, extenuate, and mitigate the Guideline F security concern. Accordingly, Applicant 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 as follows:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a–1.c:	Against Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraph 2.a:	For Applicant

### **Conclusion**

In light of the record as a whole, it is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information.

Michael H. Leonard  
Administrative Judge

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<sup>30</sup> AG ¶ 2(a)(1)–(9).