



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



In the matter of: )  
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----- ) ISCR Case No. 13-01126  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Ray T. Blank Jr., Esq., Department Counsel  
For Applicant: *Pro se*

11/04/2014

**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 has a history of financial problems, which includes an ongoing Chapter 13 bankruptcy case. 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**

Applicant completed and submitted an application for a security clearance on December 9, 2013. After reviewing the application and the information gathered during a background investigation, the Department of Defense (DOD), on March 7, 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 or continue access to classified

information.<sup>1</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.

Applicant answered the SOR on March 25, 2014. Neither Applicant nor Department Counsel requested a hearing, and so, the case will be decided on the written record.<sup>2</sup>

On September 3, 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 September 9, 2014. Applicant did not reply to the FORM within the 30-day period allowed under the Directive. The case was assigned to me November 3, 2014.

### Findings of Fact

Applicant is a 48-year-old employee who is seeking to obtain a security clearance for his job as a test technician. According to his security clearance application, (1) he is married and has two adult children; (2) he has worked full-time for his current employer since November 2010; (3) he was unemployed for two months in 2010; (4) he had full-time employment as an electronic systems technician during 1986–2010; and (5) he has had a part-time job as a high-school coach since early 2011.<sup>4</sup> Applicant and his wife had gross income of approximately \$105,343 in 2011, \$101,044 in 2012, and \$109,257 in 2013.<sup>5</sup> They have an average monthly gross income of approximately \$9,068 in 2014, which equates to about \$108,816 annually.<sup>6</sup>

There is substantial evidence to support the SOR allegations that Applicant has a history of financial problems or difficulties. In general terms, the delinquent debts listed in the SOR consist of the following: (1) eight unreleased state tax liens for a total of \$4,912; (2) two unsatisfied judgments for a total of \$6,048; (3) two student loans for a

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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 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> Exhibit 4.

<sup>5</sup> Exhibit 5 (see statement of financial affairs).

<sup>6</sup> Exhibit 5 (see statement of current monthly income).

total of \$65,741; and (4) four collection accounts for a total of \$1,299. In addition, the SOR alleged failure to pay federal income taxes for tax years 2005–2009 as well as \$26,000 in back taxes owed to the IRS. Finally, the SOR alleged Applicant filed a Chapter 13 bankruptcy case in January 2014.

In his answer to the SOR, Applicant admitted all the allegations except for a \$3,703 judgment, which he denied. He also stated that he is disputing the judgment and submitted documentation of the dispute through a credit bureau. In addition to his admissions, the SOR allegations are established by credit reports<sup>7</sup> and bankruptcy court records.<sup>8</sup> He further explained the financial difficulties as follows:

Our decision to file bankruptcy was to make sure our creditors would get paid in a timely manner. Our financial difficulties were due to several periods of unemployment, a few large medical bills and our lack of an emergency savings account or emergency credit cards. We did NOT want to file Chapter 7 bankruptcy, because we did not want to walk away from our debt and financial responsibilities. We wanted to make sure they were taken care of and paid, and we felt like Chapter 13 would help organize our debt and making payment via our bankruptcy attorney would ensure our creditors were getting paid on time without incurring more debt and fees.<sup>9</sup>

The bankruptcy court records shed further light on Applicant's financial problems.<sup>10</sup> Applicant and his wife stated they had \$288,915 in total assets and \$551,239 in total liabilities. A few of the liabilities are mentioned below.

Schedule D lists creditors holding secured claims. It shows that the IRS filed a lien in April 2003 for \$40,276.

Schedule E lists creditors holding unsecured priority claims. It shows Applicant owes the IRS \$41,766 in back taxes for tax years 2003–2013.

Schedule F lists creditors holding unsecured nonpriority claims (commonly known as unsecured debt). It shows Applicant owes a total of \$289,422 to numerous creditors. The vast majority of the debt, approximately \$281,181, is for multiple student loan accounts.

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<sup>7</sup> Exhibits 6, 7, and 8.

<sup>8</sup> Exhibit 5.

<sup>9</sup> Answer to SOR at page 2.

<sup>10</sup> Exhibit 5.

The proposed payment plan calls for Applicant and his wife to pay \$1,927 monthly for 60 months (five years). In addition, tax refunds for tax years 2013, 2014, and 2015 may be paid into the plan.

Applicant did not submit documentation showing the Chapter 13 payment plan was approved and confirmed by the bankruptcy court. Likewise, he did not submit documentation showing a record of monthly payments under the plan. And other than a two-month period of unemployment in 2010 (as stated in his security clearance application), he did not submit documentation showing periods of unemployment as stated in his answer to the SOR.

### **Law and Policies**

It is well-established law that no one has a right to a security clearance.<sup>11</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>12</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>13</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>14</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>15</sup> The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>16</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>17</sup> In addition, an applicant has the ultimate

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<sup>11</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>12</sup> 484 U.S. at 531.

<sup>13</sup> Directive, ¶ 3.2.

<sup>14</sup> Directive, ¶ 3.2.

<sup>15</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>16</sup> Directive, Enclosure 3, ¶ E3.1.14.

<sup>17</sup> Directive, Enclosure 3, ¶ E3.1.15.

burden of persuasion to obtain a favorable clearance decision.<sup>18</sup> In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>19</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>20</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>21</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>22</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>23</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>24</sup>

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<sup>18</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>19</sup> *Egan*, 484 U.S. at 531.

<sup>20</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

<sup>21</sup> Executive Order 10865, § 7.

<sup>22</sup> AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

<sup>23</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>24</sup> AG ¶ 18.

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 indicates inability or unwillingness to satisfy debts<sup>25</sup> and a history of not meeting financial obligations.<sup>26</sup> The state tax liens, the back taxes owed to the IRS, the student loan accounts, and the collection accounts are more than sufficient to establish these two disqualifying conditions.

There are six mitigating conditions under Guideline F.<sup>27</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. With that said, Applicant is credited with disputing the unsatisfied judgment in SOR ¶ 1.g. He also receives credit for taking action to resolve his financial problems under a Chapter 13 payment plan. That is a step in the right direction, and it is certainly a better option than walking away from his indebtedness under Chapter 7. But the credit in mitigation is minimal, because there is no evidence before me that the bankruptcy court approved the plan and that Applicant has made monthly payments per the plan.

Of course, a security clearance case is not aimed at collecting debts or enforcing tax laws.<sup>28</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

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<sup>25</sup> AG ¶ 19(a).

<sup>26</sup> AG ¶ 19(c).

<sup>27</sup> AG ¶¶ 20(a)–(f).

<sup>28</sup> ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.<sup>29</sup>

Based on the available evidence, Applicant has not taken enough significant actions to mitigate the security concern under Guideline F. There is no track record of Applicant adhering to the Chapter 13 payment plan and I cannot assume that he has made such payments. In light of the facts and circumstances here, the evidence presents uncertainty, and that uncertainty equates to doubt about Applicant's fitness for access to classified information.

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.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h–1.s:	Against 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>29</sup> ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotations omitted).

<sup>30</sup> AG ¶ 2(a)(1)–(9).