



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



In the matter of:	)	
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	)	ISCR Case No. 14-02750
Applicant for Security Clearance	)	

**Appearances**

For Government: Gregg A. Cervi, Esq., Department Counsel  
For Applicant: Michael J. Harris, Esq.

01/06/2015

**Decision**

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to revoke his security clearance to work in the defense industry. A 43-year-old senior systems engineer, Applicant has a history of financial problems or difficulties consisting largely of defaulted student loans. He has borrowed money from his cohabitant and made a lump-sum payment of \$20,000 to settle the student loans. 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 security clearance application on February 6, 2014.<sup>1</sup> After reviewing the application and information gathered during a background investigation, the Department of Defense (DOD), on July 24, 2014, sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly

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<sup>1</sup> Exhibit 1.

consistent with the national interest to grant him access to classified information.<sup>2</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. In his answer to the SOR, he admitted the factual allegations and provided an explanation.

The case was assigned to me November 12, 2014, to conduct the hearing requested by Applicant. The hearing was held as scheduled on December 10, 2014. The transcript of the hearing (Tr.) was received December 22, 2014.

The record was kept open until December 23, 2014, to allow Applicant to provide additional documentary evidence. Those matters were timely received and are admitted without objections as Exhibit V.

### **Findings of Fact**

Applicant is a 43-year-old employee who is seeking to upgrade an existing security clearance to a higher level. He is employed as a senior systems engineer for a federal contractor. His current annual salary is about \$65,000.<sup>3</sup> He has worked for the same company since December 2008.

Applicant has never married, although he is now living with a serious girlfriend. He has a 18-year-old daughter from a previous relationship. He obtained legal custody of his daughter in 2001, when she was five years old; the child's mother has since had little involvement in the child's life; and Applicant assumed responsibility for all child-rearing duties.<sup>4</sup> His daughter is now a college student and works as a manager at a restaurant.

Applicant's employment history includes honorable service in the U.S. Coast Guard during 1990–1995.<sup>5</sup> He then went to work in a fabrication shop building parts for industry until he was laid off. He found employment with a plumbing company and worked there for about four years until he injured his back. His back injury combined with a retraining program led him to his current employment.

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<sup>2</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>3</sup> Exhibit G.

<sup>4</sup> Exhibit H; Tr. 36–40.

<sup>5</sup> Exhibits I, J, K, and L.

He earned an associate's degree in network systems administration in 2003, completing the degree as an honor graduate.<sup>6</sup> He worked during the day, and his mother provided child care when he attended night classes at the campus. Upon completion, he worked as a biomedical engineer for a local hospital during 2003–2008. He discovered that a bachelor's degree would help him advance at work. He enrolled in a major online university, allowing him to work at the hospital and take classes from home while parenting his daughter. By December 2008, he completed a bachelor's degree in information technology with a grade-point average of 3.76 on a 4.0 scale.<sup>7</sup> He began working for his current employer shortly thereafter, and he was granted a security clearance in 2009.<sup>8</sup>

Applicant has a good employment record according to affidavits from three people who have worked closely with him.<sup>9</sup> The affidavits describe Applicant as, by example, a security-conscious employee who follows and enforces security rules and protocols for the handling and safeguarding of classified information.

The SOR alleges and there is substantial evidence to show that Applicant has a history of financial problems or difficulties.<sup>10</sup> In his answer to the SOR, he admitted each of the debts alleged and explained various matters, including that the student loan debt for \$26,405 in SOR ¶ 1.i was transferred to the creditor in SOR ¶¶ 1.a–1.j. Accordingly, those matters are addressed together. Further, the delinquent debts are discussed as follows: (1) multiple student loans in collection for a total of about \$33,937; (2) a \$4,152 collection account stemming from a credit card account; and (3) a medical collection account for \$52. Applicant has now resolved all the delinquent debts.

(1) Applicant explained that he fell behind on the student loans and eventually defaulted because he lacked sufficient funds to meet living expenses while residing in a high-cost area.<sup>11</sup> In about 2008, he unsuccessfully sought a deferment on the loans.<sup>12</sup> The matter was brought to his attention during the recent background investigation and he began making monthly payments. The payment history from the current creditor shows an IRS offset for \$1,836 in 2012 and \$1,908 in 2013, two \$250 payments in February 2014, a \$500 payment in March 2014, two \$500 payments in April 2014, a \$500 payment in July 2014, a \$500 payment in August 2014, a \$457 payment in September 2014, two \$457 payments in October 2014, and a \$457 payment in

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<sup>6</sup> Exhibits M and N.

<sup>7</sup> Exhibit O.

<sup>8</sup> Exhibit 1.

<sup>9</sup> Exhibits P, Q, and S.

<sup>10</sup> Exhibits 2–5.

<sup>11</sup> Answer to SOR; Tr. at 55.

<sup>12</sup> Tr. 59.

November 2014.<sup>13</sup> That same month, Applicant negotiated a settlement with the creditor, and he borrowed money from his live-in girlfriend to make a lump-sum payment of \$20,000 to settle the student loans, which then had an outstanding balance of \$31,970.<sup>14</sup> Payment of \$20,000 was made on December 2, 2014.<sup>15</sup>

Applicant has agreed to repay his girlfriend by making \$1,500 monthly payments.<sup>16</sup> In December 2014, he made a \$4,000 payment (two payments of \$2,000 on December 8) by transferring money to his girlfriend's bank account.<sup>17</sup> He also explained that he now has sufficient cash flow to make the \$1,500 monthly payment.<sup>18</sup> The lender, his girlfriend, believes that her "current salary and financial situation is such that this [loan] poses no financial hardship on [her]."<sup>19</sup> Applicant agreed with that assessment and indicated that his girlfriend, who is also employed by a defense contractor, earns more than twice as much as he does.<sup>20</sup>

(2) The \$4,152 collection account is now resolved.<sup>21</sup> Applicant incurred the debt by using a credit card account that eventually went into collection status for the same reason as the student loans. He settled the account for a lump-sum payment of \$2,995 in August 2014.

(3) The \$52 medical collection account is now resolved.<sup>22</sup> The debt stems from medical office visits by Applicant or his daughter. The account (as well as three other medical collection accounts) was paid in full in August 2014.

At the hearing, Applicant was serious and respectful, and he answered questions candidly. I was favorably impressed by Applicant and had no concerns about his credibility.

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<sup>13</sup> Exhibits A and B.

<sup>14</sup> Exhibits C, D, R, T, U, and V.

<sup>15</sup> Exhibit D.

<sup>16</sup> Tr. 64–65.

<sup>17</sup> Exhibit V.

<sup>18</sup> Tr. 62–63.

<sup>19</sup> Exhibit R.

<sup>20</sup> Tr. 72–75.

<sup>21</sup> Exhibit E.

<sup>22</sup> Exhibit F.

## Law and Policies

It is well-established law that no one has a right to a security clearance.<sup>23</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>24</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>25</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>26</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>27</sup> The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>28</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>29</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>30</sup>

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>31</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>32</sup>

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<sup>23</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>24</sup> 484 U.S. at 531.

<sup>25</sup> Directive, ¶ 3.2.

<sup>26</sup> Directive, ¶ 3.2.

<sup>27</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>28</sup> Directive, Enclosure 3, ¶ E3.1.14.

<sup>29</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>30</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>31</sup> *Egan*, 484 U.S. at 531.

<sup>32</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>33</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>34</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>35</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>36</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>33</sup> Executive Order 10865, § 7.

<sup>34</sup> AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

<sup>35</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>36</sup> AG ¶ 18.

to satisfy debts<sup>37</sup> and a history of not meeting financial obligations<sup>38</sup> within the meaning of Guideline F. The facts are sufficient to establish these two disqualifying conditions, and the facts also suggest a degree of inattention or irresponsibility.

In mitigation, I have considered six mitigating conditions under Guideline F,<sup>39</sup> and I have especially considered the following as most pertinent:

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 individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

The mitigating conditions in AG ¶¶ 20(c) and 20(d) apply because there are clear indications that Applicant's financial problems are resolved and under control, and he has made a good-faith effort to repay the delinquent debts. Importantly, he is not incurring new delinquent debt and his overall financial situation appears to be stable. He took steps throughout 2014 to resolve the delinquent debts, which he completed in December when he reached a settlement with the student loan creditor. He further demonstrated good faith by the recent \$4,000 payment on the \$20,000 loan he obtained from his girlfriend, thereby reducing the balance by 20%. Taken together, these circumstances show a favorable upward trend as well as financial responsibility.

Applicant's financial record is not perfect. But the evidence also supports a conclusion that he has established a meaningful track record of reform and rehabilitation through actual debt reduction. He also has a plan to repay the loan from his girlfriend within the next 12 months ( $\$16,000 \div \$1,500 = 10.67$  months), which is reasonable.

Applicant's history of financial problems does not justify current doubt about his reliability, trustworthiness, good judgment, and ability to protect classified 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 gave due consideration to the whole-person concept.<sup>40</sup> In particular, I considered Applicant's good employment record and his reputation as a security-conscious employee. 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.

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<sup>37</sup> AG ¶ 19(a).

<sup>38</sup> AG ¶ 19(c).

<sup>39</sup> AG ¶ 20(a)–(f).

<sup>40</sup> AG ¶ 2(a)(1)–(9).

## **Formal Findings**

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline F: For Applicant

Subparagraphs 1.a–1.m: For Applicant

## **Conclusion**

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

Michael H. Leonard  
Administrative Judge