



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



In the matter of: )  
 )  
----- ) ISCR Case No. 14-02834  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Andre Gregorian, Esq., Department Counsel and  
John B. Glendon, Esq., Deputy Chief Department Counsel  
For Applicant: *Pro se*

02/29/2016

**Decision**

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny him eligibility for access to classified information. Applicant presented sufficient evidence to explain and mitigate the concern stemming from his history of financial problems. 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 February 27, 2013.<sup>1</sup> Thereafter, on November 5, 2014, after reviewing the application and information gathered during a background

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

investigation, the Department of Defense (DOD)<sup>2</sup> 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. Applicant answered the SOR on December 3, 2014, and he requested a hearing before an administrative judge.

The case was assigned to me on September 18, 2015. The hearing was held as scheduled on November 9, 2015. Department Counsel offered Exhibits 1–3, and they were admitted. Applicant offered Exhibits A–F, and they were admitted. The hearing transcript (Tr.) was received on November 23, 2015.

### **Ruling on Procedure**

The SOR contains three allegations of indebtedness that are duplicates of other matters in the SOR. First, the past-due account in SOR ¶ 1.b appears to be a duplicate of the past-due account in SOR ¶ 1.a.<sup>4</sup> Second, the \$409 collection account in SOR ¶ 1.h appears to be a duplicate of the \$409 collection account in SOR ¶ 1.g.<sup>5</sup> And third, the \$619 collection account in SOR ¶ 1.j appears to be a duplicate of the \$619 collection account in SOR ¶ 1.e.<sup>6</sup> When the same conduct is alleged twice under the same guideline, one of the allegations should be resolved in an applicant's favor.<sup>7</sup> Accordingly, the matters in SOR ¶ 1.b, ¶ 1.h, and ¶ 1.j are concluded for Applicant.

### **Findings of Fact**

Applicant is a 44-year-old employee who is seeking to obtain a security clearance for the first time. He is employed as a technician by a corporation that facilitates research and development for the federal government. His job involves working on security access control and alarm systems. He has been so employed since February

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<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.

<sup>4</sup> Tr. 64–66.

<sup>5</sup> Tr. 70–71.

<sup>6</sup> Exhibit A at 1 and Exhibit C.

<sup>7</sup> See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice).

2013. Before that, he worked as a technician for a security company during 2004–2013. During most of that period, he had another job in the hospitality industry during 1998–2011. His educational background includes a high school diploma and some college. He married for the third time in 2008. His first two marriages ended in divorce in about 2000 and 2007, respectively. He has four children, ages 16, 13, 11, and 7.

Applicant has a history of financial problems, which he does not dispute. The SOR contains factual allegations that fall into two groups: (1) a past-due account (120 days or more past due) for a line of credit in the amount of \$20,294 with an account balance of \$97,000; and (2) six ordinary collection accounts for a total amount of about \$15,729. Those seven delinquent accounts are established by credit reports from 2013 and 2014.<sup>8</sup>

Applicant's financial difficulties began during his second marriage, which began in 2004 and ended in divorce in 2007. During the hearing, Applicant explained at length the circumstances that led him and his then wife to buy two homes, the first in 2004 and the second in 2006, and the subsequent foreclosures.<sup>9</sup> The first home had a purchase price of about \$225,000 with a down payment of a few thousand dollars. The second home had a purchase price of about \$400,000 with a down payment of about \$25,000. The down payment on the second home was made by refinancing the mortgage loan on the first home and taking out \$80,000 in equity. The balance of \$55,000 was deposited into a bank account where, over time, Applicant's wife, who handled the household finances, drained the account without Applicant's knowledge.<sup>10</sup> Once discovered, the marriage did not survive, and Applicant stated the situation "ruined" his credit.<sup>11</sup>

The credit reports from 2013 and 2014 confirm the foreclosures.<sup>12</sup> The March 2013 credit report shows foreclosures on two real estate mortgage loan accounts with \$0 balances.<sup>13</sup> The credit reports also show real estate mortgage loan accounts that were paid or transferred to or purchased by another lender with balances of \$0.<sup>14</sup> None of those matters are alleged in the SOR, but they are part of Applicant's overall financial history.

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<sup>8</sup> Exhibits 2 and 3.

<sup>9</sup> The 2004–2006 period was shortly before the financial crisis of 2007–2008, which is considered by many to be one of the worst since the Great Depression of the 1930s. It involved, among other things, the bursting of the U.S. housing bubble, which had seen rising prices for residential real estate fueled by lax lending practices and speculation.

<sup>10</sup> Tr. 45–48; Exhibit B.

<sup>11</sup> Tr. 55.

<sup>12</sup> Exhibits 2 and 3.

<sup>13</sup> Exhibit 2 at 6.

<sup>14</sup> Exhibit 2 at 6, 7, 8, and 9; Exhibit 3 at 1 and 2.

Excluding the duplication, the SOR alleges one past-due account (120 days or more past due) for a line of credit in the amount of \$20,294 with an account balance of \$97,000 (SOR ¶ 1.a). The debt is established by the March 2013 credit report.<sup>15</sup> Applicant explained this account is a line of credit that was used as a second mortgage to buy the second home in 2006.<sup>16</sup> He stated that he contacted the lender, during the course of his 2013 background investigation, and the lender advised they had no record of the account.<sup>17</sup> The debt does not appear in the April 2014 credit report or a more recent credit report from September 2015.<sup>18</sup>

Excluding the duplications, the SOR alleges six collection accounts for a total amount of about \$15,729. The largest is a \$13,088 collection account in SOR ¶ 1.c. Applicant explained this collection account stems from a credit card account he used to pay for attorney's fees for the divorce from his second wife.<sup>19</sup> He decided to retain legal representation in order to recover some of the money his second wife had diverted and spent, but he was not successful. The debt remains unpaid, and it does not appear on the April 2014 credit report or the September 2015 credit report.<sup>20</sup>

The \$954 collection account in SOR ¶ 1.d stems from a balance due on an apartment lease.<sup>21</sup> Applicant explained the debt went into collection after a disagreement regarding the carpet in the apartment. He settled the debt for \$720 in August 2014, which was a few months before he received the SOR.<sup>22</sup>

The \$619 collection account in SOR ¶ 1.e stems from a utility account for the second home.<sup>23</sup> Applicant settled the debt for \$433 in July 2014, which was a few months before he received the SOR.<sup>24</sup>

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<sup>15</sup> Exhibit 2 at 2.

<sup>16</sup> Tr. 58–64.

<sup>17</sup> Tr. 61.

<sup>18</sup> Exhibits 3 and F.

<sup>19</sup> Tr. 66–67.

<sup>20</sup> Exhibits 3 and F.

<sup>21</sup> Tr. 67–68.

<sup>22</sup> Exhibit A at 6 and Exhibit C.

<sup>23</sup> Tr. 68–69.

<sup>24</sup> Exhibit A at 1 and Exhibit C.

The \$454 collection account in SOR ¶ 1.f stems from a utility account for the second home.<sup>25</sup> Applicant explained that his second wife paid the account, but he was unable to obtain a receipt of payment.

The \$409 collection account in SOR ¶ 1.g stems from a telephone account.<sup>26</sup> Applicant recalls paying this debt, but he had no documentation for the account.

The \$205 collection account in SOR ¶ 1.i stems from a parking ticket that was issued to him for operation of a company vehicle during his previous employment.<sup>27</sup> He disputes the validity of this debt because he was not driving the vehicle on the day in question. He had no documentation on this account.

Applicant estimated his annual income at \$65,000.<sup>28</sup> He had an annual income of about \$55,000 in his previous job, when he bought the homes and went through the foreclosures.<sup>29</sup> His wife works outside the home and she earns about \$20,000 to \$25,000 annually.<sup>30</sup> He explained that he and his wife are both involved in managing their household finances, and they have a good working relationship in this respect.<sup>31</sup> He estimated having about \$2,500 in bank accounts and about \$10,000 in a 401(k) account.<sup>32</sup>

A December 2014 credit report is favorable.<sup>33</sup> And the most recent credit report from September 2015 contains only 1 potentially negative account and 16 accounts in good standing.<sup>34</sup> The negative item is a credit card account, opened in July 2004 and last reported in March 2009, that was paid for less than the full amount in a settlement.<sup>35</sup> The credit report also confirms Applicant's statement that he and his current wife bought

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<sup>25</sup> Tr. 69–70.

<sup>26</sup> Tr. 70.

<sup>27</sup> Tr. 71–73.

<sup>28</sup> Tr.38–39.

<sup>29</sup> Tr. 39–40.

<sup>30</sup> Tr. 74.

<sup>31</sup> Tr. 73.

<sup>32</sup> Tr. 74–75.

<sup>33</sup> Exhibit D.

<sup>34</sup> Exhibit F.

<sup>35</sup> Exhibit F at 3.

a home for about \$200,000 in 2014.<sup>36</sup> The transaction was financed with a 30-year FHA mortgage loan, and the account is in good standing with no late payments.

### Law and Policies

It is well-established law that no one has a right to a security clearance.<sup>37</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>38</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>39</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>40</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>41</sup> The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>42</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>43</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>44</sup> In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>45</sup>

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<sup>36</sup> Tr. 76–77; Exhibit F at 10–11.

<sup>37</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>38</sup> 484 U.S. at 531.

<sup>39</sup> Directive, ¶ 3.2.

<sup>40</sup> Directive, ¶ 3.2.

<sup>41</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>42</sup> Directive, Enclosure 3, ¶ E3.1.14.

<sup>43</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>44</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>45</sup> *Egan*, 484 U.S. at 531.

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>46</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>47</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>48</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>49</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>50</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.

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<sup>46</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

<sup>47</sup> Executive Order 10865, § 7.

<sup>48</sup> AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

<sup>49</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>50</sup> AG ¶ 18.

The evidence supports a conclusion that Applicant has a problematic financial history within the meaning of Guideline F.<sup>51</sup> That history goes back several years to the period when Applicant became financially overextended by buying two homes during an overheated real estate market shortly before it collapsed. Coupled with a spouse who was financially unfaithful, Applicant's credit was "ruined," to use his words. As a result, he was unable to pay his some of his creditors on a timely basis.

In mitigation, I have considered the six mitigating conditions under Guideline F.<sup>52</sup> The following mitigating conditions are 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; and

AG ¶ 20(c) . . . there are clear indications that the problem is being resolved or is under control.

Applicant's problematic financial history is due, in part, to his second marriage, which was relatively brief. His marital troubles came to a head in 2006–2007, when he discovered his spouse's financial unfaithfulness. He acted responsibly under the circumstances by continuing to work two jobs. Since that time, he married his current spouse in 2008, and they have worked together to clean up and repair their fiscal house. Applicant settled two of the collection accounts in 2014. He was also able to improve his credit worthiness to the point that he qualified for a 30-year mortgage loan in 2014. Also, a December 2014 credit report shows improvement in Applicant's credit worthiness. These circumstances are an indication of financial responsibility and show Applicant is not ignoring his financial obligations.

There are also strong indications that Applicant's financial problems are under control. In addition to settling the two collection accounts and buying a home in 2014, the most recent credit report from September 2015 shows only one potentially negative item, a credit card account that was settled for a lesser amount in 2009, which was several years ago. Otherwise, the credit report reflects 16 accounts in good standing, including the mortgage loan. Applicant and his spouse have a gross annual income of about \$90,000; they have about \$2,500 in the bank; and he has about \$10,000 in a retirement account. These circumstances show that the condition of Applicant's fiscal house, while not perfect, has improved substantially and is on a favorable upward trend.

Overall, the evidence is sufficient to explain and mitigate the concern stemming from Applicant's problematic financial history. His financial problems were largely due to

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<sup>51</sup> AG ¶ 19(a) and (c).

<sup>52</sup> AG ¶ 20(a)–(f).



his second marriage, which ended in divorce. Like many people in that situation, Applicant's recovery from that setback has been prolonged. Nevertheless, he did not give up or quit and he is making progress. He also impressed me as a hardworking and sincere person who takes his financial obligations seriously. The financial problems he experienced are several years in the past, and his current financial situation is stable.

The concerns over Applicant's problematic financial history do not create doubt about his current reliability, trustworthiness, good judgment, and ability to protect classified information. Although he did not present a flawless case, he presented sufficient evidence to resolve the concern. 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>53</sup> Accordingly, I conclude that he met his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant his eligibility for access to classified information.

### **Formal Findings**

The formal findings on the SOR allegations are:

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|---------------------------|---------------|
| Paragraph 1, Guideline F: | For Applicant |
| Subparagraphs 1.a–1.j:    | 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.

Michael H. Leonard  
Administrative Judge

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<sup>53</sup> AG ¶ 2(a)(1)–(9).