



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



In the matter of:)	
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Applicant for Security Clearance)	ISCR Case No. 14-02635

Appearances

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

11/25/2015

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to revoke an existing security clearance to work in the defense industry. He has a history of financial problems or difficulties due to circumstances largely beyond his control. He has acted responsibly under the circumstances, and he has initiated a good-faith effort to repay his delinquent debts. He presented sufficient evidence to explain and mitigate his problematic financial history. 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 March 3, 2013.¹ After reviewing the application and information gathered during a background investigation, the Department of Defense

¹ Exhibit 1 (this document is commonly known as a security clearance application).

(DOD),² on July 28, 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.³ 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 September 12, 2014, and requested a decision based on the written record in lieu of a hearing. Subsequently, on May 18, 2015, Applicant changed his mind and requested a hearing, which was not opposed by Department Counsel.⁴

The case was assigned to me on July 8, 2015. The hearing was held as scheduled on July 29, 2015. Department Counsel offered Exhibits 1–6, and they were admitted. Applicant offered Exhibits A, F–J, J/K, and L–W, they were admitted.⁵ Other than Applicant, neither party called any witnesses. The hearing transcript (Tr.) was received on August 6, 2015.

The record was kept open until August 26, 2015, and then extended to September 9, 2015, to allow Applicant to submit additional documentary matters. Applicant made a timely submission on September 4, 2015, and those matters are admitted without objections as Exhibits X–CC.

Findings of Fact

Applicant is a 44-year-old employee who is seeking to retain a security clearance previously granted to him. He is employed as a technical writer and editor for a major defense contractor. He has worked for the same company since 1999. He has a good employment record, which includes handling hundreds of sensitive documents with zero discrepancies.⁶

Applicant has a history of financial problems, which he does not dispute. The SOR allegations consist of 16 collection accounts or charged-off accounts for a total of

² 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.

³ 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.

⁴ Appellate Exhibit I.

⁵ For reasons unique to this case, there were no exhibits marked B, C, D, E, K, or P.

⁶ Exhibits U, V, and W.

about \$23,000. Thirteen of those accounts are for less than \$1,000. And 8 of the 16 accounts are collection accounts stemming from necessary medical care or treatment. Applicant disputes the \$342 medical collection account in SOR ¶ 1.e, due to a disagreement with the dental services provided to his child and he has no intention of paying it. Otherwise, he admits the alleged debts, which are also established by credit reports from 2013, 2014, and 2015.⁷

Applicant traces his financial problems or difficulties back to 2012 when his wife became ill and was required to leave her employment and go on disability.⁸ Her health improved and she returned to work but was subsequently laid off and forced to seek other employment. She received unemployment compensation for a period.⁹ She returned to work in about September 2014.¹⁰ In addition, Applicant’s mother-in-law and father-in-law moved into his household so they could help care for his father-in-law who was experiencing dementia. They remained in the household until his father-in-law fell and injured himself resulting in placement in a rehabilitation nursing home where he passed away. Applicant has also spent a large amount of money on automobile repairs. During 2011–2015, he spent a total of about \$7,388 for repairs on a 2001 vehicle or on a 2002 vehicle.¹¹

Applicant presented extensive and detailed documentation showing that he has resolved or is in the process of resolving numerous delinquent debts. To date, of the 16 debts in the SOR, he has paid or settled 8 accounts, he entered into repayment arrangements for 6 accounts, he disputes a \$342 medical collection account, and another account was not traceable through the creditor and was deleted from his credit file. The current status of each debt in the SOR is summarized in the table below.

<i>Debt</i>	<i>Status</i>
SOR ¶ 1.a–\$30 medical collection account.	Paid. (Answer to SOR at 4; Exhibit 6 at 2)
SOR ¶ 1.b–\$157 medical collection account.	Paid. (Exhibit A; Exhibit 6 at 2)
SOR ¶ 1.c–\$12 medical collection account.	Paid. (Answer to SOR at 4; Exhibit 6 at 2)
SOR ¶ 1.d–\$31 medical collection account.	Paid. (Answer to SOR at 4; Exhibit 6 at 2)

⁷ Exhibits 5, 4, and 6, respectively.

⁸ Answer to SOR; Exhibit A, which is a multi-part document; Tr. 37–38.

⁹ Exhibit A.

¹⁰ Exhibit A.

¹¹ Exhibit A.

SOR ¶ 1.e—\$342 medical collection account for dental services.	Disputes; unpaid. (Exhibit 6 at 3)
SOR ¶ 1.f—\$471 medical collection account.	Paid/settled. (Exhibits F and X)
SOR ¶ 1.g—\$877 charged-off credit card account.	Paid/resolved. (Exhibits G and Y)
SOR ¶ 1.h—\$925 charged-off credit card account.	In a repayment arrangement for \$50 monthly. (Exhibits H and Z)
SOR ¶ 1.i—\$1,379 charged-off credit card account.	In a repayment arrangement for \$50 monthly. (Exhibit I)
SOR ¶ 1.j—\$154 past-due credit card account.	Now in collection status with balance of \$800; agreed to pay \$511 to settle the account with \$51 monthly payments. (Exhibit J). Also, deleted from credit file in May 2015. (Exhibit J/K)
SOR ¶ 1.k—\$884 charged-off account.	Unable to locate account with creditor; deleted from credit file in May 2015. (Exhibit J/K)
SOR ¶ 1.l—\$941 charged-off account.	In a repayment arrangement for \$50 monthly with balance of \$192 as of July 2015. (Exhibit L)
SOR ¶ 1.m—\$3,012 charged-off account.	In a repayment arrangement for \$25 monthly with balance of \$2,757 as of June 2015, with a pending lump-sum offer to settle for less than \$1,500. (Exhibit M)
SOR ¶ 1.n—\$13,458 charged-off account.	In a repayment arrangement for \$50 monthly with balance of \$11,783 as of July 2015. (Exhibit N)
SOR ¶ 1.o—\$316 medical collection account.	Paid. (Exhibits O and AA)
SOR ¶ 1.p—\$20 medical collection account.	Paid. (Exhibit BB)

In addition to the indebtedness in the SOR, Applicant presented documentary evidence showing he has payment arrangements to resolve four other delinquent

debts.¹² He also presented a detailed monthly budget showing payments for recurring expenses as well as payments for the repayment arrangements.¹³ His monthly budget shows a positive net remainder of about \$326.

Applicant earns an annual salary of about \$78,000.¹⁴ He also picked up a part-time job working weekends to earn extra money that he uses to repay the delinquent debts.¹⁵ He and his wife have reduced or limited their expenses by eliminating all dining out, by limiting hobbies to things around the house, by eliminating travel or vacations, and by reducing recurring expenses such as cable TV.¹⁶ His plan is to continue making the monthly payments per the repayment arrangements and look for opportunities to settle a debt by making an affordable lump-sum payment.¹⁷

Law and Policies

It is well-established law that no one has a right to a security clearance.¹⁸ 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.”¹⁹ 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.²⁰ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.²¹

¹² Exhibits Q, R, S, and T.

¹³ Exhibit CC.

¹⁴ Tr. 57.

¹⁵ Tr. 38, 57–58.

¹⁶ Tr. 58–59.

¹⁷ Tr. 55–56.

¹⁸ *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 (10th Cir. 2002) (no right to a security clearance).

¹⁹ 484 U.S. at 531.

²⁰ Directive, ¶ 3.2.

²¹ Directive, ¶ 3.2.

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.²² The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.²³ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.²⁴ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²⁵ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.²⁶ The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.²⁷

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.²⁸ 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,²⁹ 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.³⁰ The overall concern is:

²² ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

²³ Directive, Enclosure 3, ¶ E3.1.14.

²⁴ Directive, Enclosure 3, ¶ E3.1.15.

²⁵ Directive, Enclosure 3, ¶ E3.1.15.

²⁶ *Egan*, 484 U.S. at 531.

²⁷ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

²⁸ Executive Order 10865, § 7.

²⁹ AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

³⁰ 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).

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.³¹

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 to satisfy debts³² and a history of not meeting financial obligations³³ within the meaning of Guideline F.

In mitigation, I have considered six mitigating conditions under Guideline F,³⁴ and I have 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 or is under control; and

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

Applicant fell behind and defaulted on many of his financial obligations due to circumstances largely beyond his control as described in the findings of fact, but I am persuaded that he has acted responsibly under the circumstances. He is in the process of recovering from the difficult financial situation he found himself in. To date, of the 16 debts in the SOR, he has paid or settled 8 accounts, he entered into repayment

omitted).

³¹ AG ¶ 18.

³² AG ¶ 19(a).

³³ AG ¶ 19(c).

³⁴ AG ¶ 20(a)–(f).

arrangements for 6 accounts, he disputes a \$342 medical collection account, and another account was not traceable through the creditor and was deleted from his credit file. He has provided extensive and detailed documentation of his interactions with his creditors. His monthly budget indicates that he has sufficient cash flow to adhere to his repayment arrangements, which has been assisted by taking on a part-time job. For all these reasons, I conclude that there are clear indications that Applicant's financial problems or difficulties are being resolved or under control, and that he has initiated a good-faith effort to repay his delinquent debts.

Of course, the purpose of this case is not aimed at collecting debts.³⁵ Rather, the purpose is to evaluate an applicant's judgment, reliability, and trustworthiness consistent with the 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.³⁶

Here, the evidence supports a conclusion that Applicant has established a plan and is taking steps to implement that plan sufficient to mitigate the concern. The actions he has taken establish actual debt reduction as well as a track record of progress showing a favorable upward trend.

Applicant's history of financial problems no longer creates 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.³⁷ Accordingly, I conclude that he met his

³⁵ ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

³⁶ ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotations omitted).

³⁷ AG ¶ 2(a)(1)-(9).

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:

Paragraph 1, Guideline F: For Applicant

Subparagraphs 1.a–1.p: For Applicant

Conclusion

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

Michael H. Leonard
Administrative Judge