



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



In the matter of: )  
 )  
----- ) ISCR Case No. 14-03247  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

05/07/2015  
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**Decision**  
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LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to revoke a security clearance to work in the defense industry. Applicant has a history of financial problems or difficulties dating back to 2009, when he defaulted on a mortgage loan after a protracted attempt to refinance the loan, which ended in foreclosure. He resolved two charged-off accounts for \$310 and \$399, but he has done little to resolve an unpaid judgment from 2010 for about \$6,800 and back taxes from multiple tax years for about \$14,000 owed to the IRS. He did not meet his burden to present sufficient evidence to explain and mitigate the financial considerations security concern. Accordingly, this case is decided against Applicant.

**Statement of the Case**

Applicant completed and submitted a Questionnaire for National Security Positions (SF86 Format) on February 10, 2013.<sup>1</sup> After reviewing the application and

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

information gathered during a background investigation, the DOD,<sup>2</sup> on October 1, 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.<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. He answered the SOR on October 27, 2014, and requested a hearing.

The case was assigned to me on December 15, 2014. The hearing was held as scheduled on January 28, 2015. Department Counsel offered Exhibits 1–5, and they were admitted. Applicant offered Exhibit A, and it was admitted. The hearing transcript (Tr.) was received on February 5, 2015.

### **Findings of Fact**

The SOR alleged four delinquent accounts as follows: (1) two charged-off accounts for \$310 and \$399; (2) an unpaid judgment taken against Applicant in 2010 for \$6,814; and (3) a past-due mortgage loan for \$23,932, with a balance of \$350,498, in foreclosure. He admitted the four delinquent accounts, and he provided an explanation for his situation indicating the housing crisis of 2008–2009 was a factor.<sup>4</sup> He also stated that he paid four collection accounts not alleged in the SOR, had paid off his car loan, and was subject to garnishment or wage withholding by the IRS for repayment of back taxes for tax years 2010–2013.<sup>5</sup> At the hearing, he presented proof that he paid or settled the two charged-off accounts, and those matters will not be discussed further.<sup>6</sup> His admissions and explanations are accepted and incorporated as findings of fact. In addition, the following findings of fact are supported by substantial evidence.

Applicant is a 60-year-old electronic technician. He is seeking to retain a security clearance that he has held for many years. He has worked for his current employer since 2000. Before that, he worked for a large aerospace and defense company for

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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> Answer to SOR.

<sup>5</sup> Answer to SOR.

<sup>6</sup> Tr. 28–32. Based on this evidence, SOR ¶¶ 1.b and 1.c are decided for Applicant.

about 20 years.<sup>7</sup> He has a good record of employment based on a 2014 performance appraisal of “meets requirements,” with an overall evaluation of 3 on a scale of 1 to 5.<sup>8</sup> His annual compensation is about \$52,000.<sup>9</sup>

Applicant has been married since 1979, and he and his wife have three adult children. The youngest of the children is attending college, and Applicant and his wife are helping pay the expenses.<sup>10</sup> Applicant’s wife was recently laid off, but she received severance pay consisting of six months of her regular pay.<sup>11</sup>

In his February 2013 security clearance application,<sup>12</sup> Applicant disclosed a number of financial delinquencies. He disclosed the unpaid judgment, estimated at \$6,400, which he stated was satisfied by garnishment of his wages. He explained that the judgment resulted from excessive debt. He also disclosed the mortgage loan, with an estimated balance of \$306,938, which ended in foreclosure after his failed attempts to refinance the loan. He further disclosed four accounts more than 120 days past due, but none of those matters were alleged in the SOR.

Both the unpaid judgment for \$6,814 and the past-due mortgage loan in foreclosure are established by credit reports from 2013, 2014, and 2015.<sup>13</sup> At the hearing, Applicant explained that the judgment was being paid by garnishment of his wages for a time, but that stopped when the IRS began garnishing his wages for the back taxes.<sup>14</sup> He was uncertain of the balance due, but thought it about \$6,000 or \$7,000. He did not submit any documentation for the unpaid judgment.

Concerning the back taxes,<sup>15</sup> Applicant explained he filed federal income tax returns, but he owes about \$14,000 in back taxes for multiple tax years.<sup>16</sup> The back

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<sup>7</sup> Tr. 24.

<sup>8</sup> Exhibit A.

<sup>9</sup> Exhibit A.

<sup>10</sup> Tr. 44.

<sup>11</sup> Tr. 59–60.

<sup>12</sup> Exhibit 1.

<sup>13</sup> Exhibits 2, 3, 4, and 5.

<sup>14</sup> Tr. 26–28.

<sup>15</sup> Because the back taxes are not alleged in the SOR, I have considered this matter for the limited purposes of assessing the presence or absence of reform and rehabilitation, and assessing the likelihood of continuation or recurrence of financial problems.

<sup>16</sup> Tr. 54–55.

taxes are being paid by garnishment of his wages after the IRS filed a tax lien against him.<sup>17</sup> He did not submit any documentation for the tax lien or the back taxes.

The past-due mortgage loan in foreclosure stems from the residential property owned and occupied by Applicant and his wife from about September 1997 to January 2010.<sup>18</sup> They bought the house in 1997 for about \$100,000 with a small down payment.<sup>19</sup> They refinanced the mortgage loan about three times during the course of owning the house.<sup>20</sup> The last refinance occurred in 2006, when they obtained an interest-only loan with the idea of returning to a fix-rated loan after a few years.<sup>21</sup> The 2013 credit report indicates that the loan was opened in May 2006 with a high credit balance of \$331,442.<sup>22</sup>

By 2009, Applicant decided he wanted to return to a fix-rated loan because the interest-only loan was becoming too expensive, and he sought to modify the loan with the mortgage lender.<sup>23</sup> After reviewing two loan proposals, Applicant decided the mortgage lender was offering predatory loans and he sought legal advice.<sup>24</sup> Per his attorney's advice, he stopped making payments on the mortgage loan as part of a legal strategy to persuade the mortgage lender to refinance the loan on more favorable terms.<sup>25</sup> He paid attorney's fees consisting of a \$5,000 retainer plus monthly payments of \$750 for several months.<sup>26</sup> Having defaulted on the loan, he was eventually served with foreclosure papers and he vacated the home in November 2009.<sup>27</sup> He and his wife rented their current residence in March 2010,<sup>28</sup> and at about the same time he decided

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<sup>17</sup> Tr. 65–66.

<sup>18</sup> Exhibit 1.

<sup>19</sup> Tr. 45–46.

<sup>20</sup> Tr. 46–48.

<sup>21</sup> Tr. 47–48.

<sup>22</sup> Exhibit 2.

<sup>23</sup> Tr. 33–34.

<sup>24</sup> Tr. 35.

<sup>25</sup> Tr. 35–37.

<sup>26</sup> Tr. 63–64.

<sup>27</sup> Tr. 37–38.

<sup>28</sup> Exhibit 1.

to end the lawsuit against the mortgage lender.<sup>29</sup> He stated that the house was sold in 2010 for about \$135,000, which was well below the mortgage balance.<sup>30</sup>

By December 2009, Applicant's mortgage lender, the First Federal Bank of California, was having its own troubles. It was closed by the Office of Thrift Supervision, and the Federal Deposit Insurance Corporation (FDIC) was named receiver, and all deposits and loans were transferred to the acquiring financial institution, OneWest Bank.<sup>31</sup> Since receiving the foreclosure papers and vacating the property in late 2009, Applicant has not received any written communication or documentation (e.g., IRS Form 1099) from the initial mortgage lender or its successor in interest.<sup>32</sup> He did not contact OneWest Bank concerning the foreclosure.<sup>33</sup> The most recent credit report from January 2015 shows a foreclosure with First Federal Bank with a balance of \$350,000, and a foreclosure with OneWest Bank with a balance of \$0.<sup>34</sup>

Applicant is in the process of inheriting about \$100,000 from his father's estate.<sup>35</sup> To date, he has received about \$20,000, and he expects to receive the balance by the end of 2015. His plan is to use that money to resolve the unpaid judgment and the back taxes. He did not submit any documentation concerning the inheritance.

### **Law and Policies**

It is well-established law that no one has a right to a security clearance.<sup>36</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>37</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.

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<sup>29</sup> Tr. 38.

<sup>30</sup> Tr. 53.

<sup>31</sup> Tr. 69–70; Appellant Exhibit I.

<sup>32</sup> Tr. 39.

<sup>33</sup> Tr. 61–62.

<sup>34</sup> Exhibit 5.

<sup>35</sup> Tr. 39–43.

<sup>36</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>37</sup> 484 U.S. at 531.

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>38</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>39</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>40</sup> The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>41</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>42</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>43</sup>

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>44</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>45</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>46</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>38</sup> Directive, ¶ 3.2.

<sup>39</sup> Directive, ¶ 3.2.

<sup>40</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>41</sup> Directive, Enclosure 3, ¶ E3.1.14.

<sup>42</sup> Directive, Enclosure 3, ¶ E3.1.15.

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

<sup>44</sup> *Egan*, 484 U.S. at 531.

<sup>45</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

<sup>46</sup> Executive Order 10865, § 7.

## Discussion

Under Guideline F for financial considerations,<sup>47</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>48</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>49</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 to satisfy debts<sup>50</sup> and a history of not meeting financial obligations<sup>51</sup> within the meaning of Guideline F.

In mitigation, I have considered six mitigating conditions under Guideline F,<sup>52</sup> and I have especially 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;

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<sup>47</sup> AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

<sup>48</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>49</sup> AG ¶ 18.

<sup>50</sup> AG ¶ 19(a).

<sup>51</sup> AG ¶ 19(c).

<sup>52</sup> AG ¶ 20(a)–(f).

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 [person] initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant has a history of financial problems or difficulties stemming from circumstances largely beyond his control. Those circumstances consisted of being on the wrong end of an interest-only loan and then experiencing substantial difficulties when attempting to refinance the mortgage loan during the well-known downturn in the economy and housing crisis that occurred during 2008–2009. He acted somewhat responsibly under the circumstances by using legal action to persuade the mortgage lender to modify the loan, a course of action that proved futile when the house was foreclosed and he abandoned the legal action.

Since 2010, Applicant has largely ignored the unpaid judgment for \$6,814, and only made payments via garnishment of his wages. Those payments ceased due to the IRS garnishment for back taxes, which took precedence. His plan to resolve these matters consists of relying on an anticipated inheritance of \$80,000 that he expects to receive by year end. In other words, he is promising to pay the unpaid judgment and back taxes at some point in the future.<sup>53</sup>

Of course, the purpose of this case is not aimed at collecting debts.<sup>54</sup> 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

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<sup>53</sup> In multiple cases, the Appeal Board has indicated that promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner. *E.g.*, ISCR Case No. 07-13041 at 4 (App. Bd. Sep. 19, 2008) (citing ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999)).

<sup>54</sup> ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).



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>55</sup>

Here, the evidence does not support a conclusion that Applicant has established a plan and taken steps to implement that plan sufficient to mitigate the concern. Applicant's plan, which is not established by supporting documentation, is too speculative to establish that the delinquent debts are being resolved or are under control. This is especially so given that the unpaid judgment dates back to 2010, and the back taxes are for multiple tax years going back to 2010. Other than garnishment of his wages, Applicant has done little to resolve these matters.

Given those circumstances, Applicant's history of financial problems 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.<sup>56</sup> Accordingly, I conclude that he did not meet 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.d:	Against Applicant
Subparagraphs 1.b & 1.c:	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. Eligibility is denied.

Michael H. Leonard  
Administrative Judge

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<sup>55</sup> ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotations omitted).

<sup>56</sup> AG ¶ 2(a)(1)–(9).