



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



In the matter of: )  
 )  
----- ) ISCR Case No. 14-04707  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Gregg Cervi, Esq., Department Counsel  
For Applicant: *Pro se*

07/16/2015  
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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. He provided sufficient evidence to explain and mitigate the financial considerations security concern. In addition, he did not provide a deliberately false answer in response to a question about his financial record when he completed and submitted a security clearance application in 2013. Accordingly, this case is decided for Applicant.

**Statement of the Case**

Applicant completed and submitted a Questionnaire for National Security Positions (Standard Form 86) on December 30, 2013.<sup>1</sup> After reviewing the application and information gathered during a background investigation, the Department of Defense (DOD), on October 22, 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

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

eligibility for access to classified information.<sup>2</sup> The SOR is similar to a complaint.<sup>3</sup> It detailed the reasons for the action under the security guidelines known as Guideline F for financial considerations and Guideline E for personal conduct. He answered the SOR on November 12, 2014, and requested a hearing.

The case was assigned to me on February 25, 2015. The hearing was held as scheduled on March 25, 2015. Department Counsel offered Exhibits 1 and 2, and they were admitted. Applicant offered Exhibits A–G, and they were admitted. The hearing transcript (Tr.) was received on April 1, 2015.

The record was kept open to provide Department Counsel or Applicant an opportunity to submit additional documentation concerning Applicant's ongoing bankruptcy case. Those matters were timely submitted by Applicant, and they are admitted, without objections, as Exhibit H.

### **Findings of Fact**

Applicant is a 31-year-old engineer for a federal contractor. He earned a bachelor's degree in electrical engineering in December 2005. He has worked for his current employer since 2006. He is seeking to retain a security clearance previously granted to him in 2008.

The evidence establishes that Applicant has a history of financial problems or difficulties, which he does not dispute. At issue in the SOR are four delinquent debts consisting of the following: (1) a past-due mortgage loan on residential real estate in the amount of \$4,062 with a loan balance of \$162,506; (2) a \$33,452 collection/charged-off account stemming from a home-equity loan on the same real estate; and (3) and (4) two medical collection accounts in the amounts of \$1,174 and \$139. Applicant admitted those debts in his answer to the SOR, and they are established by a 2014 credit report.<sup>4</sup> Those four delinquent debts, and others, are being resolved in an ongoing bankruptcy case that should result in a discharge of indebtedness in 2015.<sup>5</sup> Initially, the case was filed Chapter 13, but it was converted to a case under Chapter 7 shortly

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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> 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>4</sup> Exhibit 2 (credit report).

<sup>5</sup> Exhibits B–H (bankruptcy case paperwork).

thereafter. The two loans connected to the house in State A are listed as foreclosures on Schedule F for unsecured nonpriority claims, and the two medical collection accounts, owed to a children's medical center for treatment of Applicant's second son, are on the Schedule F as well.<sup>6</sup>

A series of events led to the ongoing bankruptcy case. Applicant married in 2005, and he and his wife moved to State A so he could begin his first job in early 2006. Initially, they rented a home and lived there during 2006–2007. They bought their first home in July 2007. Applicant acknowledged that he was anxious to buy their first home and did so against the advice of his wife who suggested they wait.<sup>7</sup> The transaction was completed using 100% financing, with no down payment, with a 5/1 adjustable-rate mortgage. Such financing was the fashion at the time, because they bought the home before the economic downturn caused by the 2008 financial crisis.<sup>8</sup> The largest part (80%) of the transaction was financed by the mortgage loan (SOR ¶ 1.a), and the 20% balance was financed by a home-equity loan (SOR ¶ 1.c).

Several months later in 2008, Applicant and his wife had their first child. His wife had a difficult pregnancy and had complications from childbirth. Their son is autistic, and he is now a full-time special education student. Their respective mothers made various trips from State B to State A to help, but their assistance was limited due to the distance between the two states and demands on their time. The situation led Applicant and his wife to conclude that they should return to State B to be nearer to their families. Applicant was able to find another position with the company and began working in State B in August 2008, which allowed him to rejoin his wife and son, as they had already relocated to State B.

The move resulted in Applicant renting the house in State A instead of selling it due to the declining real estate market in 2008. This resulted in some financial strain as the monthly rental did not cover the total monthly expenses of the house, but Applicant and his wife nonetheless remained current with their other bills. This situation continued until 2012 when their second son was born.

About three months after the child's birth, it was discovered that Applicant's second son had a serious medical condition (hydrocephalus) that required brain surgery.<sup>9</sup> What followed then was a series of medical events that resulted in multiple hospitalizations, medical treatments and procedures, and 24/7 at-home nursing care. Throughout this time, Applicant focused on earning a living for his family and attending to his responsibilities at work, and his wife focused on caring for their two sons.

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<sup>6</sup> Exhibit H.

<sup>7</sup> Tr. 53–54.

<sup>8</sup> Tr. 57.

<sup>9</sup> Tr. 32–38 (see Applicant's wife's testimony describing the child's history of medical problems).

In the summer of 2013, Applicant and his wife moved from their rental property to the home they currently own and occupy. They made the move for the well being of their two sons. The house was new and presented less risk to the youngest son who had respiratory troubles. The house was also located in a better school district for the oldest son with autism.

As things progressed over time, Applicant and his wife became financially, physically, and emotionally strained. With the additional expenses and the shortfall from the house in State A, they were unable to keep up with regular payments on all their bills. The mortgage loan and home-equity loan became past due during the summer of 2013. They had hoped to return to financial stability by the end of the 2013, but their tenants in State A learned of the delinquent mortgage loans and elected not to buy the house when Applicant offered to sell it to them. The tenants vacated the house shortly thereafter. Unable to obtain a short sale, Applicant and his wife elected to allow the house to go into foreclosure, which was completed in 2014. Applicant understood that State A is a nonrecourse state, and so he understood his liability was limited to the balance due on the home-equity loan.

During this same period, Applicant's second son was experiencing further medical problems. In late 2013, the child spent five weeks in the hospital on a ventilator.<sup>10</sup> From that point until late June 2014, the child was hospitalized monthly. In late June the child's condition became quite grave. Their son was taken off life support and passed away in early July 2014 due to anoxic brain injury and cardiac arrest.<sup>11</sup>

Also in December 2013, Applicant was required to complete a security clearance application for a periodic reinvestigation.<sup>12</sup> This task was in addition to other tasks he was trying to complete before or during the holiday break at work and while dealing with the various issues of his second son. He described the situation with his second son as a "nightmare."<sup>13</sup> In completing the application, he did not disclose any delinquent accounts, including the then past-due mortgage loans, in response to a question seeking such information. At the hearing, he explained his omission was not deliberate, but was due to oversight and lack of due diligence in completing the application.<sup>14</sup>

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<sup>10</sup> Tr. 37–38.

<sup>11</sup> Exhibit A (death certificate).

<sup>12</sup> Exhibit 1.

<sup>13</sup> Tr. 83.

<sup>14</sup> Tr. 61–64.

## Law and Policies

It is well-established law that no one has a right to a security clearance.<sup>15</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>16</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>17</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>18</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>19</sup> The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>20</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>21</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>22</sup>

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>23</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>24</sup>

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<sup>15</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>16</sup> 484 U.S. at 531.

<sup>17</sup> Directive, ¶ 3.2.

<sup>18</sup> Directive, ¶ 3.2.

<sup>19</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>20</sup> Directive, Enclosure 3, ¶ E3.1.14.

<sup>21</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>22</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>23</sup> *Egan*, 484 U.S. at 531.

<sup>24</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>25</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>26</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>27</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>28</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>25</sup> Executive Order 10865, § 7.

<sup>26</sup> AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

<sup>27</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>28</sup> AG ¶ 18.

to satisfy debts<sup>29</sup> and a history of not meeting financial obligations<sup>30</sup> within the meaning of Guideline F.

In mitigation, I have considered the six mitigating conditions under Guideline F,<sup>31</sup> and the following mitigating condition is most pertinent:

AG ¶ 20(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation), and the individual acted responsibly under the circumstances.

Applicant's financial problems resulted from a series of unfortunate and unpredictable events beyond his control. First, Applicant's first son was born after a difficult pregnancy and complications for his wife. Those circumstances, along with the child's autism, motivated Applicant and his wife to relocate from State A, where they recently bought a home, to State B so they could be nearer to their families. Second, Applicant was unable to sell the home in State A due to a downturn in the real estate market caused by the 2008 financial crisis. The house was rented, but the monthly rental did not cover all of the associated expenses, which created a financial strain. Third, their second son was born in 2012 and then endured brain surgery followed by extensive and invasive medical care that ended in the child's death in 2014.

Applicant and his wife acted responsibly under the circumstances. Applicant focused on earning a living for his family and attending to his responsibilities at work, his wife focused on child care, and they met their financial responsibilities with some difficulty until late 2013 when they concluded that foreclosure was the best option. After that, their financial situation worsened to the point where they sought relief via a Chapter 7 bankruptcy case, which will conclude this year. Together, Applicant and his wife experienced a nightmarish and overwhelming sequence of events. Although deeply saddened by the loss of their son, neither Applicant nor his wife displayed bitterness or vengefulness at the hearing. I was impressed with how Applicant and his wife conducted themselves at the hearing.

Applicant is a good example of the honest but unfortunate debtor who is deserving of the fresh start provided by a bankruptcy case. Given both the totality and uniqueness of facts and circumstances here, I have no doubt or concern about Applicant's history of financial problems in relation to his eligibility for access to classified information. Moreover, I assess the risk or likelihood of further financial problems as acceptably low. He provided sufficient evidence to explain and mitigate the financial considerations security concern under Guideline F.

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<sup>29</sup> AG ¶ 19(a).

<sup>30</sup> AG ¶ 19(c).

<sup>31</sup> AG ¶ 20(a)–(f).

Under Guideline E for personal conduct,<sup>32</sup> the concern is that conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about a person's reliability, trustworthiness, and ability to protect classified information. Of particular concern is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

A statement is false when it is made deliberately (knowingly and willfully). An omission of relevant and material information is not deliberate if the person genuinely forgot about it, inadvertently overlooked it, misunderstood the question, thought the information did not need to be reported, was unaware of the information, or made an honest mistake.

Here, I am not persuaded that Applicant made a deliberately false statement when he did not disclose delinquent accounts on his December 2013 security clearance application. In fact, I am persuaded of just the opposite. I found Applicant to be a credible witness, and I believe his explanation that he omitted those matters due to oversight and a lack of diligence when he completed the application in a hurried manner while his second son was having serious medical issues. Accordingly, Guideline E is decided for Applicant.

I have no doubts about Applicant's reliability, trustworthiness, and good judgment. 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>33</sup> 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.

### **Formal Findings**

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline F:	For Applicant
Subparagraphs 1.a–1.d:	For Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraph 2.a:	For Applicant

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<sup>32</sup> AG ¶¶ 15, 16, and 17 (setting forth the security concern and the disqualifying and mitigating conditions).

<sup>33</sup> AG ¶ 2(a)(1)–(9).



## **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. Eligibility is granted.

Michael H. Leonard  
Administrative Judge