



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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SSN: ----- ) ISCR Case No. 08-05481  
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Applicant for Security Clearance )

**Appearances**

For Government: Robert E. Coacher, Esquire, Department Counsel  
For Applicant: *Pro Se*

July 15, 2009

**Decision**

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> the Defense Office of Hearings and Appeals (DOHA) issued a statement of reasons (SOR) to Applicant on February 9, 2009. The SOR is equivalent to an administrative complaint and it details the factual basis for the action. The issues

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<sup>1</sup> This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, dated February 20, 1960, as amended, and DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition to the Executive Order and Directive, this case is adjudicated under the revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (Revised Guidelines) approved by the President on December 29, 2005. The Revised Guidelines were then modified by the Defense Department, effective September 1, 2006. They supersede or replace the guidelines published in Enclosure 2 to the Directive. They apply to all adjudications and other determinations where an SOR has been issued on September 1, 2006, or thereafter. The Directive is pending revision or amendment.

here fall under Guideline F for financial considerations and Guideline J for criminal conduct.

Applicant replied to the SOR on March 5, 2009. The hearing took place on June 4, 2009. The transcript (Tr.) was received on June 12, 2009. For the reasons discussed below, this case is decided against Applicant.

### **Findings of Fact**

Applicant replied to the SOR as follows: (1) he admitted 19 delinquent debts for approximately \$22,320 and an unpaid judgment for \$477; and (2) he admitted two incidents of domestic violence involving his then second wife, which resulted in his arrest in 1996 and 2000. In closing argument, department counsel wisely conceded that the criminal conduct matters were mitigated, and so, those matters need no further discussion herein (Tr. at 77–78). Based on the record evidence as a whole, the following facts are established by substantial evidence.

Applicant is a 42-year-old employee of a federal contractor. He is a high-school graduate who has worked as a warehouse product specialist for the same company since 1999. His gross income for 2008 was about \$49,000, and his wife earned about \$21,000. He is seeking to retain a security clearance for his employment with a company engaged in defense contracting.

Applicant married for the third time in August 2008. His first two marriages ended in divorce. He has fathered six children (two per wife). Currently, there are five children (which includes two stepchildren) living in his household. He is paying court-ordered child support via garnishments for a total of about \$760 monthly for two children from his second marriage. He has a child-support arrearage of about \$1,100 (Tr. at 65).

The record evidence proves that Applicant has a well-established history of financial problems. In addition to his admissions to the SOR allegations, two credit reports document his history of financial problems (Exhibits 3 and 4). Applicant has not paid in full, made payment arrangements, settled, or otherwise resolved any of the 19 delinquent debts or the unpaid judgment.

In addition to the SOR allegations, Applicant admitted that he and his first wife sought and obtained a Chapter 7 bankruptcy discharge of indebtedness in 1991 (Exhibit 5). He attributed the bankruptcy to youth and immaturity (Tr. at 58). Applicant is also indebted to the IRS for past-due taxes. The IRS is garnishing his wages for \$200 per month. Applicant believes he owes taxes for tax year 2008, and he is working on that issue.

Applicant and his current wife are in the process of filing a Chapter 7 bankruptcy petition to address their joint indebtedness (Exhibit A). He retained a bankruptcy attorney in June 2008, but was unable to take further action in filing a bankruptcy case because he could not afford the attorney's fees. In May 2009, he and his wife found a

more affordable arrangement, and they anticipate filing the bankruptcy petition soon. The working papers for the Chapter 7 bankruptcy case reveal a total indebtedness for unsecured creditors of \$86,722 (Exhibit A at 10–13). Of note, that figure includes a joint debt of \$33,327 that Applicant has with his second ex-wife for property in her possession. Also, the working papers contain a budget-analysis summary with a negative cash flow of \$1,350 per month (Exhibit A at 10–13). Applicant admitted these figures are an accurate reflection of his financial condition (Tr. at 66–68).

Applicant attributes his financial problems to his second marriage. Although divorced in 2008, it was preceded by a long separation period. Applicant and his then second wife separated between 1999 and 2000. This long separation period resulted in additional costs and expenses. Also, Applicant had a brief period of unemployment or underemployment due to a strike during November 2006–January 2007. Otherwise, he has been continuously employed by the same company for the last ten years.

### **Policies**

This section sets forth the general principles of law and policies that apply to an industrial security clearance case. To start, no one has a right to a security clearance.<sup>2</sup> As noted by the Supreme Court in the case of *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>3</sup> A favorable decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.<sup>4</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>5</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.

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>6</sup> The government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>7</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate

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<sup>2</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) (“It is likewise plain that there is no ‘right’ to a security clearance, so that full-scale due process standards do not apply to cases such as Duane’s.”).

<sup>3</sup> *Egan*, 484 U.S. at 531.

<sup>4</sup> Directive, ¶ 3.2.

<sup>5</sup> Directive, ¶ 3.2.

<sup>6</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>7</sup> Directive, Enclosure 3, ¶ E3.1.14.

facts that have been admitted or proven.<sup>8</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>9</sup> In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>10</sup> The agency appellate authority has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.<sup>11</sup>

The Revised Guidelines set forth adjudicative guidelines to consider when evaluating a person's security clearance eligibility, including disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. In addition, each clearance decision must be a fair and impartial commonsense decision based upon consideration of all the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept.<sup>12</sup> A person granted access to classified information enters into a special relationship with the government. 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>13</sup> Instead, it is a determination that the applicant has not met the strict guidelines the President has established for granting eligibility for a security clearance.

### **Analysis**

Under Guideline F for financial considerations,<sup>14</sup> a security concern typically exists due to significant unpaid debts. "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>15</sup> Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information.

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<sup>8</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>9</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>10</sup> *Egan*, 484 U.S. at 531.

<sup>11</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

<sup>12</sup> The nine factors of the whole-person concept are set forth in the Revised Guidelines at 1–2.

<sup>13</sup> Executive Order 10865, § 7.

<sup>14</sup> Revised Guidelines at 13–14 (setting forth the security concern and the disqualifying and mitigating conditions).

<sup>15</sup> Revised Guidelines at 13.

The record evidence supports a conclusion that Applicant has a history of financial problems. His history of financial problems raises security concerns because it indicates inability or unwillingness to satisfy debts<sup>16</sup> and a history of not meeting financial obligations<sup>17</sup> within the meaning of Guideline F. The available information is more than sufficient to establish these two disqualifying conditions. It also establishes a pattern of financial irresponsibility.

The guideline also provides that certain conditions may mitigate security concerns:

MC 1—the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment;

MC 2—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;

MC 3—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;

MC 4—the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

MC 5—the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; or

MC 6—the affluence resulted from a legal source of income.

All of the mitigating conditions have been considered and none apply in Applicant’s favor. MC 1 does not apply because his financial problems are lengthy and ongoing. His second marriage (the multi-year separation and divorce) no doubt contributed to Applicant’s financial problems. But MC 2 does not apply because the evidence does not establish that he acted responsibly under the circumstances. MC 3 does not apply because his financial problems are ongoing, he has yet to file the Chapter 7 bankruptcy petition, and it is far too soon to conclude that his financial problems are being resolved or under control. MC 4 does not apply because the

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<sup>16</sup> DC 1 is “inability or unwillingness to satisfy debts.”

<sup>17</sup> DC 3 is “a history of not meeting financial obligations.”

evidence, to include the pending Chapter 7 bankruptcy case, does not establish a good-faith effort to address his delinquent debts. And neither MC 5 nor MC 6 apply given the facts and circumstances here.

I considered this case in light of the whole-person concept<sup>18</sup> and it does not support a favorable decision. At this time, Applicant's financial problems are overwhelming. He is in the middle of financial turmoil. It will be some time before he will be able to put his financial house in good order and then establish a track record of financial responsibility.

To conclude, Applicant did not present sufficient evidence to rebut, explain, extenuate, or mitigate the security concerns under Guideline F. Applicant did not meet his ultimate burden of persuasion to obtain a favorable clearance decision. This case is decided against Applicant.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a–1.t:	Against Applicant
Paragraph 2, Guideline J:	For Applicant
Subparagraphs 2.a–2.b:	For Applicant

### **Conclusion**

In light of all of the circumstances, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Michael H. Leonard  
Administrative Judge

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<sup>18</sup> Revised Guidelines at 1–2.