



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



In the matter of: )  
 )  
----- ) ISCR Case No. 08-05988  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel

For Applicant: *Pro Se*

November 25, 2009

**Decision**

LEONARD, Michael H., Administrative Judge:

This is a security clearance case in which Applicant contests the Defense Department's intent to deny his eligibility for a security clearance to work in the defense industry. The record shows Applicant has a history of financial problems or difficulties as shown by 11 delinquent debts ranging in amounts from \$54 to \$16,340 for an approximate total of \$42,000. The debts include \$4,800 in delinquent property taxes, nine collection accounts, and one account charged off as a bad debt. He has not paid, settled, or otherwise resolved any of the debts, and he does not have a realistic plan in place to do so in the future. These circumstances create doubts about his judgment, reliability, and trustworthiness. The record contains insufficient evidence to explain, extenuate, or mitigate the security concerns. Accordingly, as explained below, this case is decided against Applicant.

## Statement of the Case

Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> the Defense Office of Hearings and Appeals (the Agency) issued a statement of reasons (SOR) to Applicant on April 9, 2009. The SOR is similar to a complaint as it detailed the factual basis for the action under Guideline F for financial considerations and Guideline E for personal conduct. Also, the SOR recommended submitting the case to an administrative judge for a determination to deny or revoke Applicant's security clearance.

Applicant answered the SOR in a timely fashion, and he requested a decision without a hearing. Accordingly, the case will be decided on the written record.<sup>2</sup>

On August 31, 2009, the government submitted its written case consisting of all relevant and material information that could be adduced at a hearing.<sup>3</sup> This so-called file of relevant material (FORM) was mailed to Applicant and received by him on September 11, 2009. He then had 30 days to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation. He did not respond within the 30-day period. The case was assigned to me November 9, 2009.

## Rulings on Procedure

The SOR was amended, on my own motion, to correct Applicant's social security number.

## Findings of Fact

Applicant is a 45-year-old employee of a federal contractor. He has worked for the same company since 1995, and he works as a system administrator. It appears that this is Applicant's initial application for an industrial security clearance.

Applicant married for the first time in 1985, and he divorced in 1999. The marriage resulted in two children, born in 1990 and 1993. He married his current wife in 2002, and they had a child in 2003.

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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, because the SOR was issued after September 1, 2006, the revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (Revised Guidelines) approved by the President on December 29, 2005, then made effective within the Defense Department on September 1, 2006, apply to this case. They supersede or replace the guidelines published in Enclosure 2 to the Directive.

<sup>2</sup> Directive, Enclosure 3, Paragraph E3.1.7.

<sup>3</sup> The file of relevant material consists of Department Counsel's written brief and supporting evidence, which will be identified as exhibits in this decision.

Applicant has a history of financial problems or difficulties as shown by delinquent accounts described in credit reports from 2007, 2008, and 2009.<sup>4</sup> The SOR alleged 11 delinquent accounts ranging in amounts from \$54 to \$16,340 for an approximate total of \$42,000. The debts include \$4,800 in delinquent property taxes, nine collection accounts, and one account charged off as a bad debt. Applicant admitted the indebtedness when he answered the SOR. He did not present proof of repayment, settlement, or otherwise resolving the debts when he answered the SOR; he did not reply to the FORM.

In August 2007, Applicant completed a security-clearance application in which he responded to questions about his background, to include his financial record.<sup>5</sup> In response to Question 28a, he denied having any debts more than 180 days delinquent in the last seven years. And in response to Question 28b, he denied currently having any debts more than 90 days delinquent.

Applicant was interviewed in October 2007, as part of a background investigation.<sup>6</sup> In relevant part, he provided the following information about his financial situation:

- His divorce resulted in a child-support payment of \$600 monthly. He reported that the divorce was costly, and the child-support payment has been a burden on him.
- After he remarried, his wife quit a good-paying job so she could care for her ailing parents who live hundreds of miles away from Applicant. This resulted in Applicant being the sole breadwinner in the household while attempting to support two households, pay child support, and pay travel expenses associated with visiting his wife and daughter.
- Applicant has borrowed from his 401(k) account to supplement his income, and he then had two outstanding loans that he was repaying.
- His wife is unaware of the financial problems. Applicant is afraid that she would consider divorce if she knew the true state of their finances.
- He is unsure where he will find the money to resolve his delinquent property taxes.
- In general, his plan was to pay off the delinquent accounts once his child-support obligation ended in a couple of years.

Subsequently, the Agency propounded written interrogatories to Applicant about his finances.<sup>7</sup> He answered several but not all of the interrogatories in November 2008. Concerning the delinquent accounts, he explained that he would make repayments once his child-support obligation ended. He did not respond to questions about why he

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<sup>4</sup> Exhibits 5, 6, and 9.

<sup>5</sup> Exhibit 4.

<sup>6</sup> Exhibit 7.

<sup>7</sup> Exhibit 8.

failed to list any delinquent accounts in response to Questions 28a and 28b of his security-clearance application. And he indicated that he was unwilling to tell his spouse about his current financial situation.

## Policies

This section sets forth the general principles of law and policies that apply to an industrial security clearance case. To start, the only purpose of a clearance decision is to decide if an applicant is suitable for access to classified information.

It is well-established law that no one has a right to a security clearance.<sup>8</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>9</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>10</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>11</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>12</sup> The government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>13</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>14</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>15</sup> In *Egan*, the Supreme

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<sup>8</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>9</sup> 484 U.S. at 531.

<sup>10</sup> Directive, ¶ 3.2.

<sup>11</sup> Directive, ¶ 3.2.

<sup>12</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>13</sup> Directive, Enclosure 3, ¶ E3.1.14.

<sup>14</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>15</sup> Directive, Enclosure 3, ¶ E3.1.15.

Court stated that the burden of proof is less than a preponderance of the evidence.<sup>16</sup> The Agency's appellate authority has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.<sup>17</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 commonsense decision based upon consideration of all the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept.

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>18</sup> Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

### **Analysis**

Under Guideline F for financial considerations,<sup>19</sup> the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive indebtedness, financial problems or difficulties, or financial irresponsibility. A security concern typically exists due to significant unpaid debts. The overall concern under Guideline F is that:

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>20</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>16</sup> *Egan*, 484 U.S. at 531.

<sup>17</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

<sup>18</sup> Executive Order 10865, § 7.

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

<sup>20</sup> Revised Guidelines, ¶ 18.

The record here shows Applicant has, judging by the credit reports, a history of financial difficulties dating back several years. His well-established history of financial difficulties raises concerns because it indicates inability or unwillingness to satisfy debts<sup>21</sup> and a history of not meeting financial obligations<sup>22</sup> within the meaning of Guideline F. The facts are more than sufficient to establish the two disqualifying conditions, and it suggests financial irresponsibility as well.

Under ¶ 20 of Guideline F, there are six mitigating conditions as follows:<sup>23</sup>

(a) 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;

(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;

(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;

(d) The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

(e) 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

(f) The affluence resulted from a legal source of income.

All of the mitigating conditions have been considered and none, either individually or in combination, are sufficient to mitigate and overcome the security concerns. Applicant receives some credit under ¶ 20(b), because his financial difficulties are due, in part, to his costly divorce from his first wife and the resulting child-support obligation, which Applicant is still required to pay. These circumstances serve to extenuate or mitigate Applicant's history of financial difficulties. The credit is limited, however, because the divorce took place several years ago and supporting one's children is not

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<sup>21</sup> Revised Guidelines, ¶ 19(a).

<sup>22</sup> Revised Guidelines, ¶ 19(c).

<sup>23</sup> Revised Guidelines, ¶ 20 (a) – (f) (setting forth six mitigating conditions).

an unexpected circumstance. Further, what is missing here is a plan of action to repay, settle, or otherwise resolve Applicant's delinquent accounts. Without a realistic plan and some measurable progress, it is too early to tell if he will resolve his delinquent debts anytime soon. Looking forward, the likelihood of additional financial problems cannot be ruled out. Indeed, both the delinquent property taxes and the 401(k) loans are red flags for financial distress and instability.

Turning next to the personal conduct allegations, Guideline E<sup>24</sup> includes issues of false statements and credible adverse information that may not be enough to support action under any other guideline. The overall concern is:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations [that may] raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. Of special interest 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.<sup>25</sup>

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, or genuinely thought the information did not need to be reported.

The issues here are the truthfulness of Applicant's answers to two questions on his security-clearance application. He answered both questions in the negative thereby denying any financial delinquencies within the relevant periods. His answers to these questions were not discussed during his background interview. He did not respond to interrogatories about why he failed to list any delinquent accounts in response to Questions 28a and 28b of his security-clearance application. And because this case is decided on the written record, my ability to assess credibility is limited. Given all the circumstances and limitations of the written record, the evidence is insufficient to conclude that Applicant's answers to Questions 28a and 28b were knowingly and willfully false. Accordingly, the allegations in SOR ¶¶ 2.a and 2.b are decided for Applicant.

In addition under Guideline E, the SOR alleged Applicant's failure to inform his spouse of his financial problems as a separate basis raising security concerns. The theory here is that Applicant's unwillingness to do so might make him vulnerable to exploitation, manipulation, or duress that could be used against him to compromise

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<sup>24</sup> Revised Guidelines, ¶¶ 15, 16, and 17 (setting forth the security concerns and the disqualifying and mitigating conditions).

<sup>25</sup> Revised Guidelines, ¶ 15.

classified information.<sup>26</sup> Although not fanciful, given all the circumstances and limitations of the written record, the evidence is insufficient to reach that conclusion. Accordingly, the allegation in SOR ¶ 2.c is decided for Applicant.

To conclude, the facts and circumstances surrounding Applicant's financial difficulties create doubts about his judgment, reliability, and trustworthiness. He did not present sufficient evidence to explain, extenuate, or mitigate the security concerns. In reaching this conclusion, I considered the nine-factor whole-person concept<sup>27</sup> and Applicant's favorable evidence. Applicant did not meet his ultimate burden of persuasion to obtain a favorable clearance decision. This case is decided against Applicant.

### **Formal Findings**

The formal findings on the SOR allegations, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

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|---------------------------|-------------------|
| Paragraph 1, Guideline F: | Against Applicant |
| Subparagraphs 1.a–1.k:    | Against Applicant |
| Paragraph 2, Guideline E: | For Applicant     |
| Subparagraphs 2.a–2.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 a security clearance. Eligibility for access to classified information is denied.

Michael H. Leonard  
Administrative Judge

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<sup>26</sup> See Revised Guidelines, ¶ 16(e).

<sup>27</sup> Revised Guidelines, ¶ 2(a)(1) – (9).