



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



In the matter of: )  
 )  
----- ) ISCR Case No. 08-08616  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Richard Stevens, Esq., Department Counsel

For Applicant: *Pro Se*

March 16, 2010

**Decision**

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to revoke his eligibility for a security clearance to work in the defense industry. The record evidence shows Applicant has a history of financial problems or difficulties, which includes a federal tax lien for back taxes of \$9,851 for tax year 2002. He paid the back taxes along with interest and penalty, and the lien was released in December 2009. Also, he has brought his past-due mortgage loan current. A small medical collection account remains unresolved, and he is disputing three other debts. Accordingly, as explained below, this case is decided for Applicant.

## **Statement of the Case**

Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> on June 19, 2009, the Defense Office of Hearings and Appeals (the Agency) issued a statement of reasons (SOR) explaining it was unable to find it is clearly consistent with the national interest to grant Applicant access to classified information. The SOR is similar to a complaint, and it detailed the factual basis for the action under the security guideline known as Guideline F for financial considerations. The SOR also recommended that the case be submitted to an administrative judge to decide whether or not to deny or revoke Applicant's security clearance.

Applicant answered the SOR in a timely fashion and requested a hearing. His responses to the SOR allegations were mixed. The case was assigned to me September 2, 2009, The hearing took place October 28, 2009. The transcript (Tr.) was received November 5, 2009.

The record was held open until December 31, 2009, to allow Applicant to present additional documentary evidence. Applicant made a timely submission on or about December 17, 2009, and the post-hearing matters are admitted, without objections, as follows: (1) Exhibit J—federal tax lien information; (2) Exhibit K—mortgage loan statements; and (3) Exhibit L—household budget information.

## **Findings of Fact**

Based on the record evidence as a whole, the following facts are established by substantial evidence.

Applicant is a 51-year-old senior graphic designer who is seeking to retain an industrial security clearance he has held since the 1980s.<sup>2</sup> He earned a bachelor's degree in 1981, and he has since worked as a graphic designer for various federal contractors. He has worked for his current employer since 2006; his current annual salary is about \$89,000. His wife has worked as a contracts administrator since about 2002; her current annual salary is about \$89,000 as well.

Applicant married the same year he completed college. He and his wife have lived at the same address since 1982. They have two children, a 23-year-old daughter and a 21-year-old son. The daughter recently completed college and is working a part-time job while looking for a full-time position. Applicant and his wife paid for their

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<sup>1</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 DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (Revised Guidelines), effective within the Defense Department on September 1, 2006, apply to this case. They replace the guidelines published in Enclosure 2 to the Directive.

<sup>2</sup> Exhibit 1.

daughter's college expenses, and they are currently providing her with money for monthly living expenses. The son is a college student, and Applicant is paying all educational expenses, to include monthly living expenses.

Applicant has a history of financial problems or difficulties. The SOR alleged six delinquent debts, to include the federal tax lien and a past-due mortgage loan. Each debt is addressed below in sequence per the SOR.

The debt in SOR ¶ 1.a concerns the federal tax lien for \$9,851. It stems from tax year 2002, when Applicant took a premature withdrawal from a 401(k) retirement account when his wife was required to repay approximately \$9,000 for tuition assistance provided by a former employer.<sup>3</sup> The Internal Revenue Service (IRS) placed the tax lien against Applicant in 2007. In early March 2008, Applicant learned that he owed the IRS about \$13,949 for the balance, interest, and penalty.<sup>4</sup> He and his wife then entered into a repayment installment agreement with the IRS agreeing to pay \$1,000 monthly beginning April 2008.<sup>5</sup> Applicant or the IRS or both failed to follow up on the installment agreement, and Applicant made no payments on the account as of October 2009.<sup>6</sup> After the hearing, Applicant made arrangements to resolve his account with the IRS. He and his wife paid \$11,583 on December 3, 2009, which satisfied the taxes owed and all statutory additions, and the IRS released the lien the same day.<sup>7</sup> And although not alleged in the SOR, Applicant resolved a somewhat related state tax debt, and that lien was released in July 2008.<sup>8</sup>

The debt in SOR ¶ 1.b concerns a medical account placed for collection for \$151. Applicant denies the debt because he believes it was paid by his health insurance provider. The debt (with account number 624361) does appear as unpaid in credit reports from April 2008, May 2009, July 2009, and October 2009.<sup>9</sup> The credit reports also show that Applicant has paid numerous other medical collection accounts.

The debt in SOR ¶ 1.c concerns a department store account placed for collection for \$997. Applicant admits the original debt owed to the department store, but he disputes that he now owes the full amount to the collection agency. In 2004, Applicant made arrangements with the creditor to make \$234 payments to resolve the debt with the last \$234 forgiven. He made the payments, but the account was subsequently sold

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<sup>3</sup> Tr. 60–61.

<sup>4</sup> Exhibit C.

<sup>5</sup> Exhibit F.

<sup>6</sup> Tr. 65.

<sup>7</sup> Exhibit J.

<sup>8</sup> Exhibits 3 and H.

<sup>9</sup> Exhibits 3, 4, A, and I.

to the current creditor in November 2005. All four credit reports show the account is unpaid, and all four credit reports show that Applicant is disputing the account information.

The debt in SOR ¶ 1.d concerns a past-due mortgage loan with an approximate balance of \$43,739. Applicant's monthly mortgage payment is about \$608. The account was 120 days past due in the amount of \$602 as of October 2008.<sup>10</sup> It was past due in the amount of \$1,822 (about three payments) as of May 2009.<sup>11</sup> Applicant attributes falling behind on the mortgage loan to expenses he and his wife were paying for their college-age children. Quarterly mortgage statements from October and December 2009 show that the mortgage loan is current and in good standing.<sup>12</sup>

The debts in SOR ¶¶ 1.e and 1.f concern collection accounts for \$5,482 and \$1,811. Applicant denies liability for each. The debts appear in the April 2008 credit report.<sup>13</sup> The \$5,482 debt is described as an unknown loan account, and the \$1,811 debt is described as a credit card account. Neither debt appears in the more recent credit reports.<sup>14</sup>

Applicant submitted written monthly and annual budgets.<sup>15</sup> The monthly budget shows substantial outlay for his adult children, but still results in a positive net remainder of about \$839. Of note, Applicant has no car loan payments or open credit card accounts. The annual budget for 2010 shows an estimated positive net remainder of about \$10,000.

## 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>16</sup> As noted by the Supreme Court in the case of *Department of Navy v. Egan*, "the clearly

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<sup>10</sup> Exhibit 4.

<sup>11</sup> Exhibit 3.

<sup>12</sup> Exhibit K.

<sup>13</sup> Exhibit 4.

<sup>14</sup> Exhibits 3, A, and I.

<sup>15</sup> Exhibit L.

<sup>16</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).

consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>17</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>18</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>19</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>20</sup> The government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>21</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>22</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>23</sup> In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>24</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>25</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

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<sup>17</sup> 484 U.S. at 531.

<sup>18</sup> Directive, ¶ 3.2.

<sup>19</sup> Directive, ¶ 3.2.

<sup>20</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>21</sup> Directive, Enclosure 3, ¶ E3.1.14.

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

<sup>23</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>24</sup> *Egan*, 484 U.S. at 531.

<sup>25</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.<sup>26</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>27</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>28</sup>

Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information.

The record evidence supports a conclusion that Applicant has a history of financial problems or difficulties as shown by the federal tax lien and the other matters. This history raises concerns because it indicates inability or unwillingness to satisfy debts<sup>29</sup> and a history of not meeting financial obligations<sup>30</sup> within the meaning of Guideline F. The facts are more than sufficient to establish these two disqualifying conditions, and they suggest financial irresponsibility or inattention or both.

Under ¶ 20 of Guideline F, there are six conditions that may mitigate security concerns.<sup>31</sup> The six conditions are as follows:

(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

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<sup>26</sup> Executive Order 10865, § 7.

<sup>27</sup> Revised Guidelines, ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

<sup>28</sup> Revised Guidelines, ¶ 18.

<sup>29</sup> Revised Guidelines, ¶ 19(a).

<sup>30</sup> Revised Guidelines, ¶ 19(c).

<sup>31</sup> Revised Guidelines, ¶ 20 (a) – (f) (setting forth six mitigating conditions).

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; and

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

Here, the most pertinent mitigating conditions are ¶¶ 20(c), 20(d), and 20(e), and each is discussed below.

First, ¶ 20(c) applies in Applicant's favor because his financial problems are being resolved or are under control. The record shows he resolved the debt of most concern by paying more than \$11,000 to the IRS; his mortgage loan is no longer past due; the \$151 medical collection account is unresolved, but it is so minor to be of no genuine concern; and he disputes the validity of three other debts, two of which no longer appear in the more recent credit reports. Given these circumstances, it appears Applicant is not financially overextended and he has enough positive cash flow to resolve any unpaid debts should legitimate demands be made.

Second, ¶ 20(d) applies in Applicant's favor as well. He made good-faith efforts to resolve his financial problems by repaying his IRS debt and by bringing his past-due mortgage loan current.

Third, ¶ 20(e) applies in Applicant's favor for the three debts he disputes. He provided adequate, although not the best, documentation of his disputes via the credit reports, which show he is disputing one debt (SOR ¶ 1.c); the other two debts (SOR ¶¶ 1.e and 1.f) do not appear in the more recent credit reports, which tends to support the validity of Applicant's claims.

To conclude, the facts and circumstances surrounding Applicant's history of financial problems or difficulties do not justify current doubts about his judgment, reliability, and trustworthiness. He presented sufficient evidence to explain, extenuate, or mitigate the concerns. In reaching this conclusion, I gave due consideration to the whole-person concept.<sup>32</sup> Although Applicant did not present a perfect case in mitigation, based on the record evidence, along with his many years as a clearance holder, I assess the potential for pressure, coercion, exploitation, or duress as remote to nil. Applicant met his ultimate burden of persuasion to obtain a favorable clearance decision. This case is decided for Applicant.

### **Formal Findings**

The formal findings on the SOR allegations are as follows:

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| Paragraph 1, Guideline F: | For Applicant |
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| Subparagraphs 1.a–1.f: | For Applicant |
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### **Conclusion**

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

Michael H. Leonard  
Administrative Judge

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<sup>32</sup> Revised Guidelines, ¶ 2(a)(1) – (9).