



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



In the matter of: )  
 )  
----- ) ISCR Case No. 08-08754  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Tovah Minster, Esq., Department Counsel  
For Applicant: *Pro se*

July 30, 2010

**Decision**

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LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to deny or revoke his eligibility for a security clearance to work in the defense industry. The record evidence shows Applicant has a history of financial problems, which are ongoing. In addition, he has a 2009 conviction for second-degree assault for which he is serving probation. His financial problems, his criminal conviction, and his status as a probationer, when taken together, justify current doubts about his judgment, reliability, and trustworthiness. Accordingly, as explained in further detail below, this case is decided against Applicant.

## Statement of the Case

Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> on February 4, 2010, 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 guidelines known as Guideline F for financial considerations and Guideline J for criminal conduct. The SOR also recommended that the case be submitted to an administrative judge to decide whether to deny or revoke Applicant's security clearance.

Applicant answered the SOR in a timely fashion and requested a hearing. The case was assigned to me March 19, 2010. The hearing took place April 30, 2010. The hearing transcript (Tr.) was received May 10, 2010.

The record was kept open until May 28, 2010, to allow Applicant an opportunity to submit additional documentary information about his finances. He made a timely submission of 28 pages in total, which includes a cover letter. The matters are admitted, without objections, as Exhibit H (which includes Attachments A–F).

## Findings of Fact

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

Applicant is a 47-year-old employee of a federal contractor. He began his current employment as a briefing officer in August 2007, and he is in good standing with his employer.<sup>2</sup> He is married and has two children from the marriage, a 23-year-old son and a 17-year-old daughter. In addition, he has an adult daughter from a previous relationship.

Applicant's employment history includes more than 20 years of honorable military service in the Army.<sup>3</sup> He served on active duty during 1983–1986. He then continued his service as a part-time soldier in the Army National Guard until 1988, when he began full-time duties. He served until he retired in June 2007, as a senior noncommissioned

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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 *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. 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>2</sup> Exhibit G.

<sup>3</sup> Tr. 63.

officer (pay grade E-7). His discharge paperwork (the DD Form 214) reflects military education consistent with his grade, and it reflects multiple decorations and medals, to include the Meritorious Service Medal (2<sup>nd</sup> award), the Army Commendation Medal (3<sup>rd</sup> award), the Army Achievement Medal (4<sup>th</sup> award), and the Army Good Conduct Medal (5<sup>th</sup> award).<sup>4</sup>

Applicant's current annual salary is about \$81,000.<sup>5</sup> For 2009 his salary was \$79,000; it was \$75,000 in 2008; and it was \$75,000 in 2007, when he began his current job. In addition, Applicant receives about \$1,500 monthly (\$18,000 annually) between a combination of retired pay and Veteran's disability compensation.<sup>6</sup>

Applicant completed a security clearance application in January 2007.<sup>7</sup> In response to two questions about financial delinquencies, Applicant reported ten delinquent accounts. Also, in response to a question about civil court actions, Applicant reported four judgments taken against him, two by a homeowners' association, one by a bank, and one by a utility company. He reported that all four judgments were paid.

Applicant has a history of financial problems. For example, the credit reports in this case reflect multiple public records related to Applicant's financial problems. A June 2008 credit report lists five judgments and two liens; a November 2008 credit report lists 15 judgments, several of which were satisfied, and four state tax liens; an August 2009 credit report lists four judgments and two liens; and a March 2010 credit report lists three judgments and two liens.<sup>8</sup> None of the liens are alleged in the SOR.

Applicant points to his problematic marriage as the primary cause of his financial problems.<sup>9</sup> His wife was a big spender while not making any meaningful contribution to their household income for the last several years. She worked full-time until about 2002, when she quit to start her own business, which eventually failed, as a personal trainer.<sup>10</sup> In addition, she pursued an expensive hobby or sport known as fitness or figure competitions. Applicant separated from his wife in April 2009, and they reconciled briefly until separating again in August 2009. Applicant remains separated from his wife and a divorce has not yet begun. His minor daughter lives with his wife. A state court ordered Applicant to pay \$1,000 monthly in support beginning in August 2009, and the order

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<sup>4</sup> Exhibit 2.

<sup>5</sup> Tr. 101–102.

<sup>6</sup> Tr. 102–103.

<sup>7</sup> Exhibit 1.

<sup>8</sup> Exhibits 8, 7, 6, and 5, respectively.

<sup>9</sup> Tr. 124–125.

<sup>10</sup> Tr. 97–99.

expired or ended in April 2010.<sup>11</sup> To date, he has not been ordered to make child-support payments for the benefit of his minor daughter.<sup>12</sup>

Another factor that contributed to Applicant’s financial problems was the unexpected expenses he incurred in 2008–2009, due to the state criminal case for which he is now serving probation. In May 2008, he was arrested for second-degree assault stemming from his involvement in a mutual affray in his neighborhood.<sup>13</sup> Applicant was not the instigator, and it appears he was coming to the aid of his wife and daughter when he became involved in the mutual affray that resulted in someone breaking his finger. In response, Applicant tore off the individual’s ear. In February 2009, Applicant pleaded guilty, via an *Alford* plea,<sup>14</sup> and was sentenced to one year in jail, suspended, and probation for 18 months.<sup>15</sup> In addition, he was ordered to pay restitution directly to the victim as well as complete 240 hours of community work service within six months. His probation is scheduled to end in about August 2010.

The SOR alleged 14 debts in some form of delinquency. The debts consist of three unpaid judgments, four medical accounts in collection, six accounts in a collection or charged-off status, and a mortgage loan in foreclosure. Applicant addressed the debts in his hearing testimony<sup>16</sup> and they are summarized in the table below.

<b><i>Debts</i></b>	<b><i>Status</i></b>
SOR ¶ 1.a—\$3,055 unpaid judgment for homeowners’ association.	Unpaid; balance of \$3,945 and in a repayment agreement as of March 2010 making monthly payments of \$256. (Exhibits C and H at Attachment E)
SOR ¶ 1.b—\$1,234 collection account.	Resolved; denies having account with original creditor; unable to verify account with creditor. (Tr. 70–73)
SOR ¶ 1.c—\$887 charged-off account.	Settled. (Exhibit H at Attachment B)
SOR ¶ 1.d—\$460 medical account in collection.	Resolved via insurance. (Exhibit H at Attachment A)

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<sup>11</sup> Tr. 121.

<sup>12</sup> Tr. 122.

<sup>13</sup> Tr. 114–119.

<sup>14</sup> *Black’s Law Dictionary* 83 (Bryan A. Garner ed., 9<sup>th</sup> ed., West 2009) (an *Alford* plea is a “guilty plea that a defendant enters as part of a plea bargain, without actually admitting guilt”).

<sup>15</sup> Exhibit 12.

<sup>16</sup> Tr. 64–96.

SOR ¶ 1.e—\$247 medical account in collection.	Resolved via insurance. (Exhibit H at Attachment A)
SOR ¶ 1.f—\$29,912 past-due on a mortgage loan, with a balance of \$225,000, in foreclosure.	In a loan modification program; pending final approval. (Exhibits B and H at Attachment D)
SOR ¶ 1.g—\$1,686 unpaid judgment for homeowners' association.	Unresolved. He believes it was paid off when mortgage loan was refinanced in 2006, but no documentation to show payment. (Tr. 64–70)
SOR ¶ 1.h—\$8,299 unpaid judgment based on personal loan.	Unpaid; balance of \$4,840 as of April 2010; making payments. (Exhibits F and H at Attachment F)
SOR ¶ 1.i—\$841 collection account.	Paid. (Exhibit D)
SOR ¶ 1.j—\$641 past-due account.	Paid. (Exhibit H at Attachment C)
SOR ¶ 1.k—\$218 medical account in collection.	Resolved via insurance. (Exhibit H at Attachment A)
SOR ¶ 1.l—\$459 medical account in collection.	Resolved via insurance. (Exhibit H at Attachment A)
SOR ¶ 1.m—\$260 collection account.	Resolved; denies having account with original creditor; unable to verify account with creditor. (Tr. 93; Exhibit H)
SOR ¶ 1.n—\$42 medical account in collection.	Resolved via insurance. (Exhibit H at Attachment A)

To sum up, Applicant paid, settled, or resolved ten accounts, two judgments are unpaid but he is making payments, the modification of the mortgage loan is pending final approval, and one judgment is considered unresolved due to lack of documentation.

Applicant reports having about \$2,000 in a checking account, and he does not have a savings account.<sup>17</sup> He has a 401(k) account with a balance of about \$5,800.<sup>18</sup> He estimates a positive monthly net remainder of about \$300 to \$400.<sup>19</sup> He recently received a federal income tax refund of about \$5,000, which he split equally with his

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<sup>17</sup> Tr. 110.

<sup>18</sup> Tr. 110–111.

<sup>19</sup> Tr. 111–112.

wife as they are still filing jointly.<sup>20</sup> He used the proceeds for the mortgage loan and car expenses. He reports he is current with filing his state and federal income tax returns and does not owe back taxes.<sup>21</sup>

## Policies

This section sets forth the general principles of law and policies that apply to an industrial security clearance case. The only purpose of a clearance decision is to decide if an applicant is suitable for access to classified information. The Department of Defense takes the handling and safeguarding of classified information seriously because it affects our national security, the lives of our servicemembers, and our operations abroad.

It is well-established law that no one has a right to a security clearance.<sup>22</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>23</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>24</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>25</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>26</sup> The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>27</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate

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<sup>20</sup> Tr. 127.

<sup>21</sup> Tr. 113.

<sup>22</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>23</sup> 484 U.S. at 531.

<sup>24</sup> Directive, ¶ 3.2.

<sup>25</sup> Directive, ¶ 3.2.

<sup>26</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>27</sup> Directive, Enclosure 3, ¶ E3.1.14.

facts that have been admitted or proven.<sup>28</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>29</sup> In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>30</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>31</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 facts and circumstances, 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>32</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>33</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>34</sup> 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>35</sup>

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<sup>28</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>29</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>30</sup> *Egan*, 484 U.S. at 531.

<sup>31</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

<sup>32</sup> Executive Order 10865, § 7.

<sup>33</sup> AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

<sup>34</sup> See 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).

<sup>35</sup> AG ¶ 18.

Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information within the defense industry. Indeed, the practice of evaluating a person based on their record of financial responsibility (or lack thereof) is used in various industries. For example, the insurance industry uses credit-based insurance scores when determining insurance rates because the scores have been found to be effective in predicting future losses.

The record evidence here supports a conclusion that Applicant has a history of financial problems or difficulties. This history raises concerns because it indicates inability or unwillingness to satisfy debts<sup>36</sup> and a history of not meeting financial obligations<sup>37</sup> within the meaning of Guideline F. The facts are sufficient to establish these two disqualifying conditions.

Under Guideline F, there are six conditions that may mitigate security concerns:<sup>38</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; and

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

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<sup>36</sup> AG ¶ 19(a).

<sup>37</sup> AG ¶ 19(c).

<sup>38</sup> AG ¶ 20 (a) – (f).



Of those mitigating conditions, the most pertinent here are subparagraphs (b) and (d). Each is discussed below.

Applicant's financial problems resulted from a combination of circumstances largely beyond his control. His problematic marriage due to a spendthrift spouse was a circumstance largely beyond his control that had a negative effect on his financial stability. He is now separated and might be headed toward divorce. Also, the May 2008 criminal case was unexpected and out-of-character for Applicant. Beyond the criminal consequences, the incident compelled Applicant to spend money for attorney's fees and other expenses (i.e., restitution), money that could have been used to repay debt.

In addition, Applicant is making a good-faith effort to repay his overdue debts or otherwise resolve the debts. As revealed by the table above, Applicant paid, settled, or resolved ten accounts, two judgments are unpaid but he is making payments, the modification of the mortgage loan is pending final approval, and one judgment is considered unresolved due to lack of documentation.

Turning next to criminal conduct under Guideline J,<sup>39</sup> the suitability of an applicant may be questioned or put into doubt when that applicant has a criminal history record regardless of whether the criminal conduct at issue has been subject to prosecution and adjudication in a court of law. The overall concern under Guideline J is that:

Criminal activity creates doubts about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.<sup>40</sup>

The arrest, charge, and conviction for second-degree assault stemming from Applicant's involvement in the May 2008 mutual affray raise a security concern.<sup>41</sup> In addition, his status as a probationer raises a concern as well.<sup>42</sup> But criminal conduct happened under unusual circumstances, which suggests that similar criminal conduct is unlikely to recur.<sup>43</sup> Indeed, in closing argument, Department Counsel accurately characterized Applicant's criminal conduct as a "one-off incident in [his] record, that he does not have any other criminal conduct on his record that we would be concerned about."<sup>44</sup>

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<sup>39</sup> AG ¶¶ 30, 31, and 32 (setting forth the security concern and the disqualifying and mitigating conditions).

<sup>40</sup> AG ¶ 30.

<sup>41</sup> AG ¶ 31(a) and (c).

<sup>42</sup> AG ¶ 31(d).

<sup>43</sup> AG ¶ 32(a).

<sup>44</sup> Tr. 139.

Standing alone, Applicant's criminal conduct does not pose undue security concerns. But Applicant's financial problems, his criminal conviction, and his status as a probationer, when taken together, justify current doubts about his judgment, reliability, and trustworthiness. Although Applicant has made progress in addressing his financial problems, it is too soon to tell if his financial problems were purely situational. Notably, some of his financial problems have existed for a long time (i.e., the homeowners' association obtained the two judgments in 2002 and 2004).<sup>45</sup> Likewise, having \$29,912 past-due on a mortgage loan with a balance of \$225,000 indicates that the loan was in default for some time.

It is also too soon to tell if Applicant is now conducting his affairs in a responsible manner to avoid similar problems in the future. In this regard, the modification of his mortgage loan, which was in foreclosure, is still pending final approval. His marriage is also in a state of flux or instability, which may result in further financial obligations for Applicant (i.e., spousal support or child support or both). In sum, the evidence shows Applicant has a large amount of turmoil in his life. His situation is a reminder of the commonsense understanding that individuals in the middle of great emotions or turmoil are not safe risks.

To conclude, following *Egan* and the clearly-consistent standard, I resolve these doubts in favor of protecting national security. In reaching this conclusion, I gave due consideration to the whole-person concept<sup>46</sup> and Applicant's favorable evidence, which was not insubstantial. Nevertheless, 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 are as follows:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a, 1.f–1.h:	Against Applicant
Subparagraphs 1.b–1.e, 1.i–1.n:	For Applicant
Paragraph 2, Guideline J:	Against Applicant
Subparagraph 2.a:	Against Applicant

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<sup>45</sup> Exhibits 9 and 10.

<sup>46</sup> AG ¶ 2(a)(1) – (9).

## **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