



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



In the matter of: )  
 )  
----- ) ISCR Case No. 08-08908  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O’Connell, Esq., Department Counsel

For Applicant: *Pro Se*

August 19, 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 an industrial security clearance. The action is based on a history of financial problems, which Applicant has just begun to address through a June 2009 bankruptcy case with more than \$100,000 in debts. The record contains insufficient evidence to explain, extenuate, or mitigate the security concerns stemming from his history of financial problems, which are ongoing and unresolved. Accordingly, as explained in detail 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 (DOHA) issued a statement of reasons (SOR) to Applicant on February 19, 2009. The SOR is equivalent to a complaint and it details the factual basis for the action. The SOR alleged security concerns under Guideline F for financial considerations. The SOR also recommended submitting Applicant's case to an administrative judge for a determination to deny or revoke a security clearance.

Applicant answered the SOR on or about March 18, 2009, and he requested a hearing. The case was assigned to me on May 4, 2009. The hearing took place as scheduled on June 17, 2009. The government presented documentary exhibits (Exhibits 1–5) and called no witnesses. Applicant presented documentary exhibits (Exhibits A–H), called one witness, and testified on his own behalf. The transcript (Tr.) was received June 25, 2009.

## Findings of Fact

Applicant's Answer to the SOR was mixed. The SOR alleged 23 delinquent debts for a total of about \$156,000. He admitted \$79,000 in delinquent debts and asserted that many of the debts were duplicates. His admissions are incorporated herein as findings of fact. Based on the record as a whole, the following facts are established by substantial evidence.

Applicant is a 41-year-old employee who works for a federal contractor that provides services to the Drug Enforcement Administration, an agency of the U.S. Department of Justice.<sup>2</sup> He has worked for his current employer, or its predecessor in interest, since he was 19 years old. He has been continuously employed for many years except for about a six-month period in 2003–2004, as discussed below, when he was out of work without income due to a dirt-bike accident. He is married, and he and his wife have two children, ages 21 and 10, both of whom reside in Applicant's household. He is seeking to obtain an industrial security clearance for the first time.

Applicant completed a security-clearance application in February 2008 (Exhibit 1). It required him to disclose information about his background, to include his financial

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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 modified by the Defense Department, and made effective September 1, 2006, apply to this case. They supersede or replace the guidelines published in Enclosure 2 to the Directive.

<sup>2</sup> By mutual agreement, the Directive extends to many other federal agencies, to include the Justice Department. Directive, ¶ 2.2.

record. In response to a question about financial delinquencies, Applicant reported many medical accounts and stated that he was in the process of filing for bankruptcy.

Credit reports from 2008 and 2009 establish that Applicant has a history of financial problems (Exhibits 2–5). For example, the trade section of the April 2008 credit report has 52 accounts of which 36 are listed as in collection or past due (Exhibit 5). The collection section of the same report has ten collection accounts with a total balance of about \$54,000.

Applicant admitted making no payments toward any of the accounts in the SOR (Tr. 71–72). Likewise, Applicant and his wife admitted having no documentation to support the claim of account duplication in the SOR (Tr. 42, 70). Applicant agreed that the debts in the SOR are credit card debts or medical debts (Tr. 71). Applicant also agreed that he allowed himself to become disconnected from his family's finances and should have played more of a role, but held back to show his wife he trusted her despite evidence of financial problems (Tr. 84–85).

It appears that Applicant's financial problems are due to a combination of: (1) a dirt-bike accident in September 2003, which resulted in a fracture to his pelvis, surgery, hospitalization, and unemployment without income for about six months; (2) his wife's mishandling of their finances, to include multiple incidents of transferring balances from one credit card account to another, hiding mail, and misrepresenting the full extent of the situation; and (3) Applicant's insufficient attention or deliberate ignorance or both to his financial responsibilities. Applicant's spouse consulted with a bankruptcy attorney for the first time in 2007, but action was not taken at that time. Applicant found out about the consultation in late 2007 or early 2008 because he noted a pending bankruptcy case in his February 2008 security-clearance application (Exhibit 1). Applicant learned more about his financial problems in about May 2008, when his spouse wrote him a letter revealing what she had done and failed to do (Tr. 67–68).

In a June 3, 2009, letter, Applicant's bankruptcy attorney advised that Applicant and his spouse had retained his office and that a Chapter 7 bankruptcy case would be filed by June 12, 2009 (Exhibit A). At the hearing, Applicant's wife explained that she understood the case was converted from a Chapter 7 liquidation case to Chapter 13 wage earner's plan with a repayment plan calling for monthly payments for 60 months (Tr. 50–52). She indicated that the Chapter 13 case was filed the day before the hearing (Tr. 51). Other than the letter, Applicant did not present any paperwork associated with the bankruptcy case (e.g., the petition, summary of schedules, schedules, repayment plan, etc.). Nevertheless, both Applicant and his spouse agreed that the bankruptcy case will address approximately \$194,000 in debts, which includes a home mortgage loan (Tr. 52, 80–81).

Applicant estimates his gross earnings for 2009 at about \$36,000 (Tr. 70). He and his wife had less than \$100 in the bank as of the date of the hearing (Tr. 79–80). His wife had a 401(k) account from a previous employer, but she liquidated it to pay bills. Applicant has a 401(k) account with a balance of about \$40,000. Last year, he

obtained a loan against his 401(k) account and is now repaying it. His wife resumed full-time employment about one year ago, and she earns \$12 hourly working as a client-service representative. She was not working when Applicant had the accident in 2003 and when he was out of work.

## 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>3</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>4</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>5</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>6</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>7</sup> The government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>8</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>9</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>10</sup> In *Egan*, the Supreme

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<sup>3</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>4</sup> 484 U.S. at 531.

<sup>5</sup> Directive, ¶ 3.2.

<sup>6</sup> Directive, ¶ 3.2.

<sup>7</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>8</sup> Directive, Enclosure 3, ¶ E3.1.14.

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

<sup>10</sup> Directive, Enclosure 3, ¶ E3.1.15.

Court stated that the burden of proof is less than a preponderance of the evidence.<sup>11</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>12</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.

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**

### ***1. The record contains insufficient evidence to explain, extenuate, or mitigate Applicant's history of financial problems.***

Under Guideline F for financial considerations,<sup>14</sup> a security concern typically exists due to significant unpaid debts. The overall concern 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>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>11</sup> *Egan*, 484 U.S. at 531.

<sup>12</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

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

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

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

Applicant's history of financial problems raises 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. Taken together, (1) Applicant's admissions to the SOR allegations, (2) the four credit reports, and (3) the testimony about the indebtedness included in the bankruptcy case, show that Applicant has delinquent debts in excess of \$100,000. These facts and circumstances are more than sufficient to establish the two disqualifying conditions noted above, and it suggests financial irresponsibility as well.

The guideline also provides that certain conditions may mitigate security concerns as follows:<sup>18</sup>

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 are sufficient to mitigate and overcome the security concerns. The most pertinent is MC 2, which recognizes the situation when bad things happen to good people. Certainly, Applicant's dirt-bike accident in 2003 and the resulting unemployment fall into this category.

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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."

<sup>18</sup> Revised Guidelines at p. 14 (setting forth six mitigating conditions).

Applicant was still largely uninformed of his family's financial situation at this time, but he was not irresponsible by trusting and accepting that his wife had matters under control. It is insufficient to fully mitigate the concerns, however, because Applicant's injury and unemployment took place six years ago. Moreover, Applicant should have been more aggressive in monitoring or verifying his family's financial situation when he saw the warning signs. MC 3 deserves consideration as well, but it does not apply. Although Applicant and his spouse received the benefit of the bankruptcy attorney's advice, there are no clear indications that the problem is resolved or under control. Whether it is a Chapter 7 or Chapter 13 bankruptcy case, it was just filed in June 2009, and it is likely still pending at the bankruptcy court. It is premature to make any judgments about the consequences (positive or negative) of Applicant's bankruptcy case.

Applicant's financial problems are not minor, and they are ongoing and unresolved. The bankruptcy case was only recently filed. If it is a Chapter 13 case, it is premature to determine if Applicant will obtain a discharge upon completion of all payments under the Chapter 13 plan. Given these circumstances, it is also too soon to tell if Applicant will resolve his outstanding delinquent debts in a reasonable time and then continue to be a financially responsible person. At this time, the likelihood of additional or continuing financial problems cannot be ruled out. Accordingly, Guideline F is decided against Applicant.

## **2. *The whole-person concept does not support a favorable decision.***

I also considered this case in light of the whole-person concept, which requires an administrative judge to evaluate a person's eligibility by considering the totality of the person's conduct and all the circumstances. An administrative judge should consider the nine factors listed in the Revised Guidelines as follows:

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.<sup>19</sup>

Applicant is an experienced and mature individual who should be able to handle his financial obligations. He has a good job and earns a decent salary. He has good intentions and wants to resolve his indebtedness. These circumstances weigh in his favor. Also weighing in his favor is his good employment record (Exhibits D–H). But a good employment record, by itself, is not sufficient to mitigate the concerns.

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<sup>19</sup> Revised Guidelines at pp. 1–2.

With more than \$100,000 in delinquent debts, Applicant faced a serious problem. He chose bankruptcy as a remedy, which is a lawful means to address indebtedness. But resort to bankruptcy also indicates how unmanageable or out-of-control or both his financial problems had become. Although the origins of his financial problems were largely beyond his control, it appears the problems were compounded over time by his insufficient attention or deliberate ignorance or both to his financial responsibilities. Based on this record, Applicant cannot place all the blame on his spouse. Without a well-established record of financial responsibility—which is lacking here—the clearly-consistent standard and *Egan* require an unfavorable decision.

To conclude, Applicant did not present sufficient evidence to 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**

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

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a–1.w:	Against 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