



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



In the matter of: )  
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----- ) ISCR Case No. 09-00620  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Ray T. Blank Jr., Esq., Department Counsel  
For Applicant: *Pro se*

June 11, 2010

**Decision**

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, to include defaulted student loans that are now in collection. There is insufficient evidence to explain, extenuate, or mitigate the security concerns stemming from his history of financial problems. 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 October 9, 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 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 November 24, 2009. The hearing took place February 3, 2010. The hearing transcript (Tr.) was received February 12, 2010.

The record was kept open until March 1, 2010, to allow Applicant to submit additional documentary evidence. He did so in a timely manner, and those matters are admitted without objections.<sup>2</sup>

## Findings of Fact

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

Applicant is a 27-year-old college graduate who is seeking an industrial security clearance for the first time. He is doing so in light of a job offer as a university research analyst; the job offer is contingent upon him obtaining a security clearance. Applicant is currently unemployed and has been so since September 2009, when he was laid off from his job with an electronics company. He receives about \$900 to \$1,000 monthly in unemployment compensation, and he is currently in a negative cash flow situation.<sup>3</sup> He is unmarried and the father of one child for whom he voluntarily pays child support when he can afford to do so.

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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> Exhibits K–X.

<sup>3</sup> Tr. 83.

Applicant has a history of financial problems.<sup>4</sup> He traces his financial problems to the 2005–2006 period when he injured his back while at work.<sup>5</sup> As a result, he was unable to work from about December 2005 to April 2006.<sup>6</sup> He had a temporary total disability and received \$84 every two weeks in workers' compensation. He used credit cards to pay for his living expenses and fell behind on his bills.

The SOR alleges 13 delinquent or past-due debts with various creditors. In his answer to the SOR, Applicant admits the debts, but contends that the accounts in SOR ¶¶ 1.a, 1.d, and 1.m are the same. In general, he explained that he was unemployed and unable to make steady payments, but would do so if he had the means. The debts include six student loans alleged to be past due for various amounts. The student loans will be discussed together, and the current status of the other debts is discussed below.

SOR ¶ 1.a concerns a collection account with a balance of \$8,049. Applicant received a settlement offer in August 2008, but could not afford to accept it.<sup>7</sup> He has since made two \$10 payments.

SOR ¶ 1.b concerns a collection account with a balance of \$787. Applicant received a settlement offer in January 2008, but could not afford to accept it.<sup>8</sup> He has since made two \$10 payments.

SOR ¶ 1.c concerns a medical collection account with a balance of \$248. Applicant reduced the balance to \$238 as of October 2009.<sup>9</sup> He has since made two \$10 payments.<sup>10</sup>

SOR ¶ 1.d concerns a judgment against Applicant in the amount of \$5,196. It concerns the same creditor in SOR ¶ 1.a, but appears to concern a different account. In June 2009, the balance due was \$5,174, and Applicant agreed to satisfy the account by paying \$25 monthly.<sup>11</sup> Since then, he made a \$25 payment in July 2009, and two \$10 payments in February 2010.<sup>12</sup>

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<sup>4</sup> Exhibits 1–5.

<sup>5</sup> Exhibits T–X.

<sup>6</sup> Tr. 70.

<sup>7</sup> Exhibit R.

<sup>8</sup> Exhibit O.

<sup>9</sup> Exhibit A.

<sup>10</sup> Exhibits I and P.

<sup>11</sup> Exhibit B.

<sup>12</sup> Exhibits G and S.

SOR ¶ 1.e concerns a collection account with a balance of \$3,522. Applicant presented account statements showing a balance of \$3,645 as of November 2009, and a balance of \$3,712 as of February 2010.<sup>13</sup>

SOR ¶¶ 1.f–1.k concern the six student loan accounts, all of which have past-due balances. Applicant presented incomplete information on these loans, but it appears that these loans are now in default and in collection.<sup>14</sup> Previously, SallieMae agreed to put the loans in forbearance from late December 2007 to late July 2008.<sup>15</sup> Then in July 2009, Applicant applied for an economic hardship deferment and obtained preapproval of his request.<sup>16</sup> By November 2009, the loans had been turned over to a collection agency seeking a lump-sum payment of 50% of the total principal and interest, which then was about \$55,695.<sup>17</sup> Applicant was only able to make small payments on the loans, such as a \$10 payment in November 2009.<sup>18</sup> More recently in February 2010, the loans were returned from the collection agency to SallieMae, and Applicant made a \$10 payment the same month.<sup>19</sup> In addition to that payment, the last five payments to his account cover the period March 2008 to December 2009, for a total of about \$374.<sup>20</sup>

SOR ¶ 1.l concerns a charged-off account with a balance of \$4,281. Applicant presented no documentary information on this account.

SOR ¶ 1.m concerns a collection account with a balance of \$6,196. Applicant presented proof of a \$10 payment in February 2009, and a \$10 payment in September 2009.<sup>21</sup>

## 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.

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<sup>13</sup> Exhibits C and Q.

<sup>14</sup> Tr. 77–79; Exhibits D, E, H, K, and M.

<sup>15</sup> Exhibit M.

<sup>16</sup> Exhibit E.

<sup>17</sup> Exhibit D.

<sup>18</sup> Exhibit H.

<sup>19</sup> Exhibit K.

<sup>20</sup> Exhibit L.

<sup>21</sup> Exhibits F and N.

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 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>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 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 Adjudicative Guidelines set forth the relevant standards 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

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<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.

<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).

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>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, 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>34</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 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>35</sup> and a history of not meeting financial obligations<sup>36</sup> within the meaning of Guideline F. The facts are sufficient to establish these two disqualifying conditions.

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<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> AG ¶ 18.

<sup>35</sup> AG ¶ 19(a).

<sup>36</sup> AG ¶ 19(c).

Under Guideline F, there are six conditions that may mitigate security concerns:<sup>37</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.

The most pertinent here are subparagraphs (b) and (d) based on Applicant's periods of unemployment and his efforts to pay, although minimal, within his means. But the credit in mitigation is insufficient to overcome the security concerns. Applicant is facing a mountain of debt, to include defaulted student loans that are now in collection. His prospects for making a realistic good-faith effort to repay or otherwise resolve his indebtedness are not good. Looking forward, it is too soon to rule out the likelihood of additional financial problems. What is missing here is a well-established track record of repayment. Although I am persuaded Applicant is sincere and genuinely wants to take care of his delinquent debts, his track record at this point is insufficient to make any safe predictive judgments about the future.

To conclude, the facts and circumstances surrounding Applicant's ongoing financial problems justify current doubts about his judgment, reliability, and trustworthiness. Following *Egan* and the clearly-consistent standard, these doubts are resolved in favor of protecting national security. In reaching this conclusion, I gave due consideration to the whole-person concept<sup>38</sup> and Applicant's favorable evidence.

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<sup>37</sup> AG ¶ 20 (a) – (f) (setting forth six mitigating conditions).

<sup>38</sup> AG ¶ 2(a)(1) – (9).

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.m:	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