



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



In the matter of: )  
 )  
----- ) ISCR Case No. 09-01286  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

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

August 18, 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 evidence shows Applicant has a history of not meeting financial obligations as well as inability or unwillingness to satisfy debts. This is demonstrated by more than \$100,000 in unpaid delinquent debts, including many student loans in collection. He did not present sufficient evidence of a good-faith effort to repay or otherwise resolve his indebtedness. There is insufficient evidence to explain, extenuate, or mitigate the security concerns stemming from his 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 March 9, 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 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 he did not request a hearing. Accordingly, the case will be decided on the written record.<sup>2</sup>

On May 26, 2010, the Agency 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 received by Applicant on June 2, 2010. He then had 30 days to respond with objections, rebuttal, extenuation, mitigation, or explanation, but he did not respond within the 30-day period. The case was assigned to me August 11, 2010.

## Findings of Fact

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

Applicant is a 31-year-old employee of a federal contractor. He has never married and has no children. His educational background includes a bachelor's degree in computer science awarded in December 2005. As reported in his security clearance application, he attended college during the period of 1997–2005.<sup>4</sup>

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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> Directive, Enclosure 3, ¶ E3.1.7.

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

<sup>4</sup> Exhibit 5.

Applicant is currently employed as a software engineer.<sup>5</sup> His security clearance application reflects that he has worked in the information technology (IT) field since June 2006, shortly after he earned his bachelor's degree.<sup>6</sup> His annual gross income is about \$67,680.<sup>7</sup>

Applicant has a history of financial problems. The SOR alleges 20 delinquent debts with various creditors for more than \$100,000. The delinquent debts are established by Applicant's admissions and the information in the credit reports.<sup>8</sup> Many of the delinquent debts are student loans in collection.

Applicant did not present documentary evidence showing he paid, settled, or otherwise resolved the debts. He did present documentary evidence showing the following: (1) payments on a judgment with a balance of \$267 as of December 2009;<sup>9</sup> (2) entry into a loan-rehabilitation program for a student loan with a balance of \$4,470 as of January 2010;<sup>10</sup> and entry into a debt-management plan for five accounts for a total of \$1,290 as of January 2010.<sup>11</sup> He attributes his financial problems to falling behind on his payments in about 2006 because he was not earning sufficient income.<sup>12</sup>

### **Law and 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.

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<sup>5</sup> Exhibit 6 at 2 of 14.

<sup>6</sup> Exhibit 5.

<sup>7</sup> Exhibit 6 at 11 of 14.

<sup>8</sup> Exhibits 7 and 8.

<sup>9</sup> Exhibit 6 at 12 of 14.

<sup>10</sup> Exhibit 6 at 13 of 14.

<sup>11</sup> Exhibit 6 at 14 of 14.

<sup>12</sup> Exhibit 6 at 4 of 14.

It is well-established law that no one has a right to a security clearance.<sup>13</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>14</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>15</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>16</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>17</sup> The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>18</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>19</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>20</sup> In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>21</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>22</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 all the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept.

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<sup>13</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>14</sup> 484 U.S. at 531.

<sup>15</sup> Directive, ¶ 3.2.

<sup>16</sup> Directive, ¶ 3.2.

<sup>17</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>18</sup> Directive, Enclosure 3, ¶ E3.1.14.

<sup>19</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>20</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>21</sup> *Egan*, 484 U.S. at 531.

<sup>22</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

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>23</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>24</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>25</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>26</sup>

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 evidence here supports a conclusion that Applicant has a history of financial problems. This history raises concerns because it indicates inability or unwillingness to satisfy debts<sup>27</sup> and a history of not meeting financial obligations<sup>28</sup> within the meaning of Guideline F. The facts are sufficient to establish these two disqualifying conditions, and the facts suggest financial irresponsibility as well.

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<sup>23</sup> Executive Order 10865, § 7.

<sup>24</sup> AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

<sup>25</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>26</sup> AG ¶ 18.

<sup>27</sup> AG ¶ 19(a).

<sup>28</sup> AG ¶ 19(c).

Under Guideline F, there are six conditions that may, individually or in combination, mitigate security concerns:<sup>29</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.

Of those mitigating conditions, the most pertinent here is subparagraph (d). The evidence shows he has taken some action to repay his delinquent debts. But the evidence also shows his efforts have just begun and address only a small portion of his more than \$100,000 in delinquent debt. Applicant overextended himself and put himself in a high-risk position by incurring more debt than he could repay. He is now dealing with the consequences. What is missing here is a well-established track record of repayment. Although he might have good intentions, his track record of repayment is insufficient to mitigate the security concerns. Looking forward, it is too soon to rule out the likelihood of additional financial problems. Likewise, it is too soon to determine if Applicant is now conducting his affairs in a financially-responsible manner to avoid similar problems in 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, I resolve these doubts in favor of protecting national security. In reaching this conclusion, I gave due

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<sup>29</sup> AG ¶ 20 (a) – (f) (setting forth six mitigating conditions).

consideration to the whole-person concept<sup>30</sup> and Applicant's favorable evidence. 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.t:	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

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<sup>30</sup> AG ¶ 2(a)(1) – (9).