



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



In the matter of: )  
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----- ) ISCR Case No. 09-01730  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

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

June 17, 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 state and federal tax debts. 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 15, 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 December 3, 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 58-year-old employee of a federal contractor. He is seeking to obtain a security clearance, although he held one in the past. He is twice married, divorced once, and separated from his current wife since 2005. He is the father of five children, all adults, the youngest of whom is 18 years old.

Applicant's employment history includes working as a field service representative for another federal contractor from 1996 to December 2005, when he decided to quit that job. This was approximately the same time (2005) when he and his wife separated. He was unemployed from December 2005 to June 2007. He worked as a maintenance technician from June 2007 to May 2008, when he was fired due to a disagreement with another employee. He was then unemployed until October 2008, when he began his

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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 G–M.

current employment as a field service representative, and has been working full-time in this position since April 2009. His annual salary is about \$52,000.<sup>3</sup>

After Applicant quit his job in 2005 and separated from his wife, he became depressed to the point that he was hospitalized. This took place when Applicant did not have health insurance.

Applicant has a history of financial problems, which he does not dispute, for more than ten years.<sup>4</sup> His history includes a Chapter 7 bankruptcy case in 1999, state and federal tax debts, and delinquent consumer debts.

His tax debts were caused by an early withdrawal from a retirement account when he cashed out a 401(k) account. He used the proceeds for his living expenses when he was unemployed.

As of June 2009, he owed the IRS \$5,348 for tax year 2006 and \$3,627 for tax year 2007.<sup>5</sup> He has an installment agreement with the IRS under which he is making monthly payments. He presented documentary proof of nine monthly payments to the IRS in 2009.<sup>6</sup>

As of January 2010, he owed the state a total of \$3,538 broken down as follows: \$1,940 for tax year 2006, \$641 for tax year 2007, and \$956 for tax year 2008.<sup>7</sup> The state has obtained judgments against Applicant for tax years 2007 and 2008.

In addition to the bankruptcy and tax debts, the SOR alleges eight delinquent debts with various creditors. The table below summarizes the current status of those eight debts.

<b><i>Debts</i></b>	<b><i>Status</i></b>
SOR ¶ 1.c—\$731 collection account.	Paid in Feb. 2010. (Exhibit G)
SOR ¶ 1.d—\$152 collection account.	Paid in 2009. (Exhibits C and H)
SOR ¶ 1.e—\$859 collection account.	Paid in Jan. 2010. (Exhibit I)
SOR ¶ 1.f—\$420 charged-off account.	Paid in Aug. 2009. (Exhibit B)

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<sup>3</sup> Tr. 62.

<sup>4</sup> Tr. 37; Exhibits 1–6.

<sup>5</sup> Exhibit M.

<sup>6</sup> Exhibit F.

<sup>7</sup> Exhibit D.

SOR ¶ 1.g—\$261 collection account.	Paid in Jan. 2010. (Exhibit J)
SOR ¶ 1.h—\$116 collection account.	\$171 balance due as of June 2009. (Exhibit K)
SOR ¶ 1.i—\$141 collection account.	Paid in Dec. 2009 (Exhibit A)
SOR ¶ 1.j—\$5,460 collection account.	\$8,066 balance as of Feb. 2010. (Exhibit L)

To sum up, six of the eight consumer debts are paid. Two remain with a total balance due of about \$8,237, with one debt more than \$8,000.

### 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>8</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>9</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>10</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>11</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>12</sup> The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>13</sup> An

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<sup>8</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>9</sup> 484 U.S. at 531.

<sup>10</sup> Directive, ¶ 3.2.

<sup>11</sup> Directive, ¶ 3.2.

<sup>12</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>13</sup> Directive, Enclosure 3, ¶ E3.1.14.

applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>14</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>15</sup> In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>16</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>17</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 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>18</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>19</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>20</sup>

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<sup>14</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>15</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>16</sup> *Egan*, 484 U.S. at 531.

<sup>17</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

<sup>18</sup> Executive Order 10865, § 7.

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

<sup>20</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.

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>21</sup> and a history of not meeting financial obligations<sup>22</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>23</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 repay his debts within his means. But the credit in mitigation is insufficient to overcome the security concerns. Applicant is facing more than \$20,000 in delinquent debts, with more than \$12,000 owed to state and

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<sup>21</sup> AG ¶ 19(a).

<sup>22</sup> AG ¶ 19(c).

<sup>23</sup> AG ¶ 20 (a) – (f) (setting forth six mitigating conditions).

federal tax authorities. He has paid six of the eight consumer debts, but he has made no progress in addressing the other two, which account for more than \$8,000. Although I am persuaded Applicant is sincere and genuinely wants to take care of his delinquent debts, the record is insufficient to make any safe predictive judgments that Applicant will resolve the remaining debts anytime soon. In addition, I note that the state and federal tax debts are viewed with disfavor, and I gave those matters substantial weight in my analysis.

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>24</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.b:	Against Applicant
Subparagraphs 1.c–1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j–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

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<sup>24</sup> AG ¶ 2(a)(1) – (9).