



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 09-05834
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Fahryn E. Hoffman, Esq., Department Counsel  
For Applicant: *Pro se*

January 11, 2011

**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 financial problems or difficulties, which he has addressed and that situation is being resolved and is under control. Also, the evidence shows Applicant engaged in child-sexual abuse in 1994, when he molested his then 13-year-old stepdaughter while her mother (and his then wife) was hospitalized for mental-health reasons. Even though this one-time event occurred long ago, and Applicant self-reported the abuse and completed a sex offenders treatment program, his conduct continues to undermine his trustworthiness and good judgment. Accordingly, as explained 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 15, 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 E for personal conduct. The Guideline F allegations concern four delinquent debts, and the Guideline E allegation concerns a 1994 incident of child-sexual abuse. 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 and requested a hearing. The case was assigned to a judge on July 2, 2010. The case was reassigned to me September 7, 2010. The hearing took place September 16, 2010. The hearing transcript (Tr.) was received September 27, 2010.

## Findings of Fact

Applicant is a 56-year-old foreman who is seeking to obtain a security clearance in conjunction with an offer of employment from a federal contractor. The job offer is to employ Applicant as an instructor. His educational background includes a bachelor's degree. He has been married and divorced twice. He married his third wife in 2005.

Applicant's employment history includes military service in the U.S. Marine Corps. He served on active duty for more than 20 years, retiring as a noncommissioned officer, master sergeant (pay grade E-8), in 1995. He was unemployed for about 6 months in 2002, for about a 16-month period during 2003–2004, and for 2 months in 2004. He relied on his income as a military retiree during these periods. He has been steadily employed since December 2004 as a foreman.

Applicant has a history of financial problems or difficulties, which he does not dispute. The SOR alleges four delinquent debts; three accounts are in a past-due status and the fourth account is a charged-off debt. Applicant attributes this indebtedness to a decline in the construction business in 2008–2009.<sup>2</sup> Applicant presented documentary evidence for each debt, and the debts are discussed below.

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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> Tr. 34.

The debt in SOR ¶ 1.a is a \$392 past-due account for a credit card. The account is now closed with a balance of about \$1,900 on which Applicant is making regular payments; the past-due balance is zero.<sup>3</sup>

The debt in SOR ¶ 1.b is a \$283 past-due account for a credit card. The account is now settled/paid in full.<sup>4</sup>

The debt in SOR ¶ 1.c is a \$8,120 charged-off account for a line of credit. This account is being resolved. Applicant has been in contact with the creditor, he made a \$500 payment in April 2010, and the balance is now about \$7,620.<sup>5</sup>

The debt in SOR ¶ 1.d is a \$6,724 past-due account for a home mortgage loan. This account is being resolved. Applicant entered into a temporary forbearance agreement in October 2009.<sup>6</sup> The agreement requires Applicant to make 12 monthly payments of \$1,885 from November 2009 to October 2010. This is about \$500 more per month than his regular mortgage payment. He is making the payments and the past-due amount has been reduced accordingly.<sup>7</sup>

In addition to these four accounts, Applicant is repaying a deficiency balance stemming from a car repossession.<sup>8</sup> The repossession took place in 2009, when Applicant experienced the downturn in business. The car was bought in his spouse's name, and they are making monthly payments to the current creditor. As of August 2010, the balance due was about \$5,427.

Applicant was married to his second wife from 1985 to about 1997, a period when he was on active military duty until he retired in 1995. The marriage was troubled as his then spouse, who is now deceased, had a history of anxiety and depression that resulted in periodic hospitalization. During one such episode in 1994, Applicant engaged in child-sexual abuse with his then 13-year-old stepdaughter.<sup>9</sup> Specifically, Applicant approached the child while she was sleeping and fondled her breasts and her buttocks, and he put his hands down her pants and touched her vagina. The conduct took place over about five minutes until the child got up and walked away when Applicant apologized. Knowing he needed help, Applicant sought assistance from his commanding officer and, in time, this led to the intervention of civilian authorities.

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<sup>3</sup> Exhibits A, B, N, and R.

<sup>4</sup> Exhibit C.

<sup>5</sup> Exhibits D and S; Tr. 35–38, 73–77.

<sup>6</sup> Exhibits E, F, and P.

<sup>7</sup> Exhibit S at 2–3.

<sup>8</sup> Exhibit O.

<sup>9</sup> Tr. 86–98; 110–116.

The criminal conduct aspects of the incident were addressed in September 1994, when Applicant entered into a deferred prosecution agreement with the local district attorney's (DA) office.<sup>10</sup> The DA agreed to defer possible indictment and criminal prosecution of Applicant provided he agreed to enter, at his own expense, and satisfactorily complete a specific sex offenders treatment program. The DA also agreed that if the program was satisfactorily completed, then the investigation and prosecution of the criminal allegations would be dismissed and prosecution or other adverse criminal sanction would not be pursued. The treatment was designed to decrease Applicant's aggressiveness toward minors and sexual deviant thought and arousal patterns.<sup>11</sup> Applicant satisfactorily completed the treatment program in April 1997.<sup>12</sup>

Applicant has not had much contact with the stepchild since the incident, although she did live with Applicant when she was a senior in high school.<sup>13</sup> Applicant's current wife is aware of the incident, and she has discussed it with the victim.<sup>14</sup> There is no record evidence that Applicant was involved in other incidents of child-sexual abuse.

### **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.

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

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<sup>10</sup> Exhibits 2 and L.

<sup>11</sup> Exhibit 2.

<sup>12</sup> Exhibits 2 and M.

<sup>13</sup> Tr. 91–92.

<sup>14</sup> Tr. 93–94.

<sup>15</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>16</sup> 484 U.S. at 531.

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>17</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>18</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>19</sup> The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>20</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>21</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>22</sup> In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>23</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>24</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>25</sup> Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

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<sup>17</sup> Directive, ¶ 3.2.

<sup>18</sup> Directive, ¶ 3.2.

<sup>19</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>20</sup> Directive, Enclosure 3, ¶ E3.1.14.

<sup>21</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>22</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>23</sup> *Egan*, 484 U.S. at 531.

<sup>24</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

<sup>25</sup> Executive Order 10865, § 7.

## Analysis

Under Guideline F for financial considerations,<sup>26</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>27</sup> The overall concern under Guideline F is:

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>28</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.

The evidence here supports a conclusion that Applicant has a history of financial problems or difficulties. This raises security concerns because it indicates inability or unwillingness to satisfy debts<sup>29</sup> and a history of not meeting financial obligations<sup>30</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>31</sup>

¶ 20(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;

¶ 20(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;

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<sup>26</sup> AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

<sup>27</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>28</sup> AG ¶ 18.

<sup>29</sup> AG ¶ 19(a).

<sup>30</sup> AG ¶ 19(c).

<sup>31</sup> AG ¶ 20 (a) – (f).

¶ 20(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;

¶ 20(d) The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

¶ 20(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

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

Of those mitigating conditions, the most pertinent are ¶¶ 20(b), 20(c), and 20(d). Applicant's delinquent indebtedness is explained, in part, to the downturn in business he experienced during 2008–2009. He has now addressed the indebtedness as follows: (1) one past-due account is current; (2) another past-due account was settled/paid in full; (3) the charged-off account is being resolved, albeit slowly; and (4) the past-due account for the mortgage loan is being resolved via a temporary forbearance agreement. Taken together, these circumstances show Applicant has made a good-faith effort to repay his delinquent debts and that the situation is being resolved or is under control. Accordingly, the Guideline F security concerns are decided for Applicant.

Under Guideline E for personal conduct,<sup>32</sup> the concern is that “[c]onduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information.” Here, the evidence shows that Applicant engaged in child-sexual abuse in 1994, when he molested his then 13-year-old stepdaughter while her mother (and his wife) was hospitalized for mental health reasons. In short, Applicant took advantage of his wife’s absence to satisfy his sexual desires with a 13-year-old girl for whom he exercised parental authority. His conduct is of great concern because it is highly probative of unreliability and untrustworthiness. His conduct was despicable and a major breach of trust. His conduct also amounts to personal conduct that creates a vulnerability in a security-clearance context.<sup>33</sup> Taken as a whole, the evidence raises unmitigated concerns under Guideline E for personal conduct. Granted, his conduct occurred years ago, he self-reported it, he completed a sex offenders treatment program, and the conduct has not recurred. But it is not mitigated because the nature of his conduct continues to undermine his trustworthiness and good judgment to such an extent that it cannot be overcome.

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<sup>32</sup> AG ¶¶ 15, 16, and 17 (setting forth the concern as well as the disqualifying and mitigating conditions).

<sup>33</sup> AG ¶ 16(e).

To conclude, the evidence of Applicant's child-sexual abuse in 1994 justifies 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 consideration to the whole-person concept<sup>34</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:	For Applicant
Subparagraphs 1.a–1.d:	For Applicant
Paragraph 2, Guideline E:	Against Applicant
Subparagraph 2.a:	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>34</sup> AG ¶ 2(a)(1)–(9).