



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



In the matter of: )  
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----- ) ISCR Case No. 09-08200  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: William O'Neil, Esq., Department Counsel  
For Applicant: *Pro se*

March 18, 2011

**Decision**

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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 he has a history of financial problems or difficulties, which are ongoing. His history includes three bankruptcy cases in the past and, more recently, debts that are now delinquent. Applicant did not present sufficient evidence to rebut, explain, extenuate, or mitigate the security concerns stemming from his history of financial problems. 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 July 8, 2010, the Defense Office of Hearings and Appeals (the Agency) issued a statement of reasons (SOR) explaining they were unable to find that it was 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 and requested a hearing. The case was assigned to me September 23, 2010. The hearing took place November 8, 2010. The transcript (Tr.) was received November 16, 2010.

## Findings of Fact

Applicant is a 39-year-old employee of a federal contractor. He is married and has two minor children living in his household. His educational background includes an associate's degree from an electronic institute, which he completed in 2000. He has since been employed in the field of information technology (IT) in various capacities.

Applicant's employment history includes two periods of unemployment within the last few years.<sup>2</sup> He worked as a technical support specialist for a law firm during 2001–2005. He left that job for a better opportunity with a company that provided IT support to a real estate company. He worked as a desktop support specialist during 2005–2008, when he was involuntarily laid off due to a medical issue that prevented him from driving. He was then unemployed from April 2008 to October 2008, a period of about six months. He resumed employment as a desktop technician and worked until about April 2009, when he was laid off due to cut backs by the company. In about July 2009, he accepted a position as a computer technician with the federal contractor that is sponsoring his application for a security clearance. But he was unable to begin work with that company due to a lack of an interim security clearance. He accepted a job in July 2010, with a HVAC company pending resolution of his security clearance case. Altogether, the second period of unemployment lasted about 15 months.

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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> Exhibit 1.

Applicant has a history of financial problems or difficulties, which are ongoing.<sup>3</sup> He does not dispute his adverse financial history, which includes three bankruptcy cases. (SOR ¶¶ 1.a–1.c) The first was a Chapter 7 case filed and discharged in 1993. The documentary evidence does not establish the amounts of the assets and liabilities at issue.<sup>4</sup> He attributes the 1993 bankruptcy case to medical bills he incurred due to his involvement in a motorcycle accident and a car accident.<sup>5</sup> The second was a Chapter 7 case filed and discharged in 2002. The documentary evidence does not establish the amounts of the assets and liabilities at issue.<sup>6</sup> He attributes the 2002 bankruptcy case to medical bills he incurred due to his involvement in a motorcycle accident in 2001.<sup>7</sup>

The third case was a Chapter 13 case filed in 2006, but it was dismissed in 2009 due to a default on the repayment plan. The documentary evidence establishes total assets of \$310,370 and total liabilities of \$344,619.<sup>8</sup> Concerning liabilities, there was \$32,523 in unsecured debt and \$310,805 in secured debt, which consisted mainly of a first and second mortgage for a total of \$273,697. The balance consisted of two auto loans. He attributes the Chapter 13 case to an attempt to save his home from foreclosure after he and his wife could no longer afford to make the mortgage payments. The home was eventually foreclosed upon, and its sale resolved the first mortgage loan, but the debt from the second mortgage loan remains unresolved. (SOR ¶ 1.o) While the repayment plan was in effect, Applicant paid a total of \$7,903, a large part of which was consumed by attorney's fees and trustee expenses and compensation.<sup>9</sup>

In addition to the three bankruptcy cases and the unresolved delinquent debt from the second mortgage, the SOR alleges 13 delinquent accounts that have been placed for collection or charged off. The amounts range from \$52 to \$11,619 for a total of approximately \$34,612. In his Answer to the SOR, he admitted these debts and he provided explanatory information in his testimony. For ease of understanding, the debts will be grouped together and discussed below.

The first group consists of four medical accounts, to unnamed creditors, that were placed for collection in the amounts of \$282, \$98, \$52, and \$273, for a total of \$705. (SOR ¶¶ 1.d, 1.f, 1.g, and 1.i) Applicant presented proof of payment for the \$52

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<sup>3</sup> Exhibits 2–12.

<sup>4</sup> Exhibit 9.

<sup>5</sup> Tr. 63–64.

<sup>6</sup> Exhibit 8.

<sup>7</sup> Tr. 61.

<sup>8</sup> Exhibit 5.

<sup>9</sup> Exhibit 7.

debt.<sup>10</sup> Otherwise, he explained that he did not know the origin or basis of the other three medical bills, although he speculated that they may have stemmed from his visits to the same local hospital.

The second group consists of four collection accounts and one charged-off account in the amounts of \$338, \$414, \$160, \$895, and \$215, for a total of \$2,022. (SOR ¶¶ 1.e, 1.h, 1.j, 1.k, and 1.l.) None of these debts is resolved.<sup>11</sup>

The third group consists of two student loan accounts in the amounts of \$8,512 and \$4,074 that were placed for collection with the same creditor. (SOR ¶¶ 1.m and 1.n.) The loans stem from the time when Applicant was obtaining his associate's degree. As of November 8, 2010, Applicant owed a total of \$13,407, and his payments were not past due.<sup>12</sup>

The fourth group consists of two charged-off debts in the amounts of \$11,619 and \$7,680 stemming from auto loans. (SOR ¶¶ 1.p. and 1.q.) Both vehicles were repossessed during the same general period when Applicant's house was foreclosed upon. He did not make any payments on the debts after repossession. He explained he is disputing the debts through the credit-reporting system, but he did not present any paperwork showing that the debts have been paid, settled, or otherwise resolved in his favor.

Applicant received unemployment compensation of about \$678, after taxes, biweekly during his most recent period of unemployment that ended in about July 2010. His spouse is employed outside the home, and she earns about \$35,000 to \$40,000 annually. They have no money in the bank, investment accounts, or other financial reserves.<sup>13</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>10</sup> Exhibit D at 11.

<sup>11</sup> Exhibit D; see Applicant's testimony on these debts.

<sup>12</sup> Exhibit A.

<sup>13</sup> Tr. 96–97.

It is well-established law that no one has a right to a security clearance.<sup>14</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>15</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>16</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>17</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>18</sup> The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>19</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>20</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>21</sup> In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>22</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>23</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.

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<sup>14</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>15</sup> 484 U.S. at 531.

<sup>16</sup> Directive, ¶ 3.2.

<sup>17</sup> Directive, ¶ 3.2.

<sup>18</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>19</sup> Directive, Enclosure 3, ¶ E3.1.14.

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

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

<sup>22</sup> *Egan*, 484 U.S. at 531.

<sup>23</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>24</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>25</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>26</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>27</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>28</sup> and a history of not meeting financial obligations<sup>29</sup> within the meaning of Guideline F. The facts are sufficient to establish these two disqualifying conditions.

With that said, I attach no security significance to the four medical debts, to unnamed creditors, for less than \$1,000 in total. Such relatively small debts—which are often due to being uninsured or underinsured, or due to medical-billing problems—are not financial obligations that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, and they do not reflect frivolous spending. The

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<sup>24</sup> Executive Order 10865, § 7.

<sup>25</sup> AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

<sup>26</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>27</sup> AG ¶ 18.

<sup>28</sup> AG ¶ 19(a).

<sup>29</sup> AG ¶ 19(c).

Agency may wish to reconsider its practice of alleging such debts in an SOR, especially when the creditors cannot be identified by name. Indeed, it is well-established law an SOR “shall be as comprehensive and detailed as the national security permits.”<sup>30</sup> Accordingly, these four debts are resolved in Applicant’s favor.

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;

¶ 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;

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

Of those mitigating conditions, the most pertinent are ¶¶ 20(b) and 20(d). I have considered these two mitigating conditions in light of the record evidence as a whole, and neither, individually or in combination, is sufficient to rebut, explain, extenuate, or mitigate the security concerns stemming from Applicant’s history of financial problems or difficulties dating back to at least 1993 and continuing to the present.

Applicant has experienced life events that were largely beyond his control and were factors in his financial problems. His multiple vehicle accidents resulted in medical bills that he elected to resolve via the Chapter 7 bankruptcy process in 1993 and again in 2002. His periods of unemployment were also a major factor. His financial problems continued when he and his wife likely overextended themselves when they bought a

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<sup>30</sup> Executive Order 10865, § 3(1).

<sup>31</sup> AG ¶ 20 (a)–(f).

home with a first and second mortgage. It is also likely they did not fully understand their obligations under the two mortgage loans. This resulted in the Chapter 13 bankruptcy case, which ended with dismissal, after he paid more than \$7,000, due to failure to comply with the repayment plan. Since then, he has done little to address his delinquent debts. The second mortgage loan for more than \$50,000, the five consumer accounts for more than \$2,000, and the two auto loans for more than \$19,000 are unresolved. To his credit, although his student loans went into collection, his payments to that creditor are now current. At this point, he is facing a small mountain of delinquent debt. And given his scant financial resources, it is too soon to tell if he will be able to address his delinquent indebtedness in a meaningful or realistic way. Looking forward, based on his history of recurring financial problems, it is most probable that he will not resolve this situation in the near future, and that his financial problems will continue or recur.

To conclude, the evidence as a whole justifies current doubts about Applicant's 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>32</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.d, 1.f, 1.g, 1.i:	For Applicant
Subparagraphs 1.m and 1.n:	For Applicant
Subparagraphs 1.a, 1.b, 1.c, 1.e, 1.h, 1.j, 1.k, 1.l, 1.o, 1.p, and 1.q:	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>32</sup> AG ¶ 2(a)(1)-(9).