



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 09-08349
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: James F. Duffy, Esq., Department Counsel  
For Applicant: Dennis J. Sysko, Esq.

August 16, 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 financial problems or recurring financial difficulties as shown by a 1997 Chapter 7 bankruptcy case and a mortgage loan in default since 2007 or 2008. The mortgaged property is pending foreclosure; it is also for sale. Although he experienced bad luck and circumstances largely beyond his control, Applicant’s current financial difficulties are part of a long-term pattern of financial irresponsibility or living beyond his means or both. His history of recurring financial difficulties justifies current doubts about his judgment, reliability, and trustworthiness. 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 24, 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 requested a hearing. The case was assigned to me May 6, 2010. The hearing was scheduled for June 3, 2010, but was rescheduled at Applicant's request. The hearing then took place July 1, 2010.

The record was kept open for briefing of any pertinent issues. Applicant's Counsel timely submitted a letter of "Points and Authorities" on July 19, 2010. Department Counsel timely submitted a reply on July 21, 2010. Those matters are made part of the record as Appellate Exhibits I and II, respectively, and I gave due consideration to the cited caselaw and arguments of counsel.

## Rulings on Procedure

Applicant introduced evidence that in May 2010, the Department of Homeland Security (DHS) Office of Security and Integrity determined that Applicant met preliminary security screening requirements for an information technology (IT) security specialist position on a contract between a DHS agency and his employer.<sup>2</sup> In doing so, DHS concluded that Applicant's financial circumstances raised a concern, but were not serious enough to justify a negative suitability determination.

This information is not sufficient to require a favorable decision based on the reciprocity provision of the National Industrial Security Program Operating Manual (NISPOM).<sup>3</sup> Reciprocity is not called for here because the DHS determination (that Applicant met preliminary security screening requirements for a particular contract) is

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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 O.

<sup>3</sup> Section 2-204 of NISPOM (Feb. 28, 2006). The NISPOM is sometimes referred to as DoD 5220.22-M.

not the same as a security clearance determination, which grants access to classified information. Nevertheless, I will consider this information on the merits of this case.

### **Findings of Fact**

Applicant is a 56-year-old employee of a federal contractor. He began his current employment as a systems security engineer in August 2009. His annual salary is about \$109,000. He has never married and has no children. He has had full-time employment in the IT field since June 1998.<sup>4</sup> He has held several jobs over the years thereby increasing his earning power from about \$73,000 to \$76,000 in 2006, to \$87,000 in 2008, to \$100,000 in 2009, and to his present level in 2010.<sup>5</sup>

His employment history includes more than 17 years of honorable military service in the U.S. Air Force.<sup>6</sup> He retired in June 1995 under an early retirement program. His gross annual retired pay is about \$13,848.<sup>7</sup>

After he retired from the Air Force, he was unemployed for about 11 months and incurred substantial indebtedness. As a result, he sought relief by filing a Chapter 7 bankruptcy case in February 1997.<sup>8</sup> Bankruptcy records indicate Applicant had earned \$3,743 year-to-date, \$10,000 the previous year, and about \$37,000 the year before. Applicant listed \$52,000 in secured debt and \$32,638 in unsecured debt. He reaffirmed the secured debt thereby retaining his primary residence (a condo) and a 1992 Honda. The unsecured debt of \$32,638 consisted of 12 accounts, to include a dishonored check and 11 credit card or revolving accounts. The bankruptcy court granted Applicant a discharge in May 1997. The condo was later foreclosed upon with a foreclosure amount of about \$48,450, but with zero deficiency because the mortgage loan was backed by the U.S. Department of Veterans Affairs.<sup>9</sup>

In about August 2002, Applicant enrolled in a debt-consolidation program in order to make one monthly payment for several accounts.<sup>10</sup> It appears this program included three credit card accounts.

About three years later in 2005, Applicant purchased a home in Florida for about \$215,000, with a down payment of \$2,000. He continued to reside in his state of current

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<sup>4</sup> Exhibit 1.

<sup>5</sup> Tr. 100–104.

<sup>6</sup> Exhibits A and B.

<sup>7</sup> Exhibit 3.

<sup>8</sup> Exhibit 7.

<sup>9</sup> Exhibit 6.

<sup>10</sup> Exhibit 6.

residence. He bought the single family home in Florida with the idea of possibly relocating there if he could find suitable employment.<sup>11</sup> In addition, he was interested in investing and thought he could sell the home quickly before the adjustable-rate mortgage went into effect.<sup>12</sup> In the meantime, he rented the Florida house to a friend or acquaintance. He did so without the benefit of a written lease. In 2007, the tenant stopped paying rent. In early 2008, Applicant hired an attorney to pursue an eviction lawsuit.<sup>13</sup> The tenant eventually vacated the home, but caused substantial damage to the home that required repairs.<sup>14</sup> For example, the contractor hired by Applicant removed more than three tons of debris from the home, and Applicant spent more than \$8,500 during 2009 for repairs.<sup>15</sup> The home is now in marketable condition.

Applicant testified that he defaulted on the mortgage loan in mid-2007.<sup>16</sup> A credit report suggests (based on the date of last activity) Applicant defaulted in 2008.<sup>17</sup> In any event, the mortgage loan has been in default for some time and foreclosure proceedings started. Applicant estimates he is about \$42,000 past-due on the mortgage loan.<sup>18</sup> He has a real estate agent and the home is listed for sale at \$74,000.<sup>19</sup> There have been several showings with no offers to buy the home. There was supposed to be a foreclosure sale of the home this past June, but it was postponed apparently because the home is listed for sale.<sup>20</sup>

In February 2010, Applicant enrolled in a debt-management plan to consolidate payments on four credit card accounts into a single monthly payment.<sup>21</sup> The total debt in the plan is about \$7,699, and it allows Applicant to make a monthly payment of \$178 plus \$55 in fees. The plan calls for payments for 62 months with total payments of \$14,186, which includes \$3,027 total interest paid to creditors and \$3,460 total fees paid to the plan.

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<sup>11</sup> Tr. 36–37.

<sup>12</sup> Tr. 73.

<sup>13</sup> Exhibit E.

<sup>14</sup> Exhibit J.

<sup>15</sup> Exhibit F.

<sup>16</sup> Tr. 79–80.

<sup>17</sup> Exhibit 5 at 5.

<sup>18</sup> Tr. 80.

<sup>19</sup> Exhibits H, I, and J.

<sup>20</sup> Tr. 81.

<sup>21</sup> Exhibit L.

Concerning his current financial situation, Applicant reports having a few thousand dollars in a checking account; he has a savings account with a zero balance; and he does not have investments accounts (i.e., stocks, bonds, mutual funds, or 401(k) account).<sup>22</sup> Applicant is active in a church and he tithes every two weeks.

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

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>27</sup> The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>28</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate

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<sup>22</sup> Tr. 86–87.

<sup>23</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>24</sup> 484 U.S. at 531.

<sup>25</sup> Directive, ¶ 3.2.

<sup>26</sup> Directive, ¶ 3.2.

<sup>27</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>28</sup> Directive, Enclosure 3, ¶ E3.1.14.

facts that have been admitted or proven.<sup>29</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>30</sup> In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>31</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>32</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>33</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>34</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>35</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>36</sup>

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<sup>29</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>30</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>31</sup> *Egan*, 484 U.S. at 531.

<sup>32</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

<sup>33</sup> Executive Order 10865, § 7.

<sup>34</sup> AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

<sup>35</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>36</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 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 recurring financial difficulties. His history raises security concerns because it indicates inability or unwillingness to satisfy debts<sup>37</sup> and a history of not meeting financial obligations<sup>38</sup> within the meaning of Guideline F. The facts are sufficient to establish these two disqualifying conditions. The evidence also supports a conclusion of financial irresponsibility or failure or inability to live within one's means or both.

Under Guideline F, there are six conditions that may mitigate security concerns:<sup>39</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.

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<sup>37</sup> AG ¶ 19(a).

<sup>38</sup> AG ¶ 19(c).

<sup>39</sup> AG ¶ 20 (a) – (f).

Of those mitigating conditions, the most pertinent here are subparagraphs (b) and (d). The evidence shows Applicant is entitled to credit under both mitigating conditions. It is clear that Applicant experienced circumstances largely beyond his control. The 11-month period of unemployment, the problematic tenant, the repair expenses, and downturn in the Florida housing market are classic examples of such circumstances. Likewise, Applicant made a good-faith effort to recover possession of the Florida home, repair it to marketable condition, and sell it in a difficult housing market.

Standing alone, the concerns stemming from the defaulted mortgage loan for the Florida house are explainable. But when taken together with the other financial red flags in this case—the 1997 Chapter 7 bankruptcy, followed by the condo foreclosure, followed by the 2002 debt-consolidation program, and the 2010 debt-management plan—the totality of circumstances support a conclusion that Applicant’s current financial difficulties are part of a long-term pattern of financial irresponsibility or living beyond his means or both. His history of recurring financial difficulties raise doubts or questions about Applicant’s judgment, reliability, and trustworthiness.

To conclude, 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>40</sup> and Applicant’s favorable evidence, which was not insubstantial. 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 and 1.b:	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>40</sup> AG ¶ 2(a)(1) – (9).