



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



In the matter of: )  
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----- ) ISCR Case No. 10-00943  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel  
For Applicant: *Pro se*

September 16, 2011

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**Decision**

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LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to deny or revoke her eligibility for a security clearance to work in the defense industry. The evidence shows Applicant has a history of financial problems or difficulties consisting of 32 accounts totaling more than \$40,000 in bad debt. Many of the delinquent debts stem from medical bills, which raise little if any security concerns. None of the other bad debt, totaling approximately \$22,000, is resolved. Applicant failed to present sufficient evidence to overcome the security concerns stemming from her problematic financial history. 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 June 1, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a statement of reasons (SOR) explaining it was 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.

Applicant timely answered the SOR and requested a hearing. The case was assigned to me July 14, 2011. The hearing took place August 4, 2011. The transcript (Tr.) was received August 19, 2011.

## Findings of Fact

The SOR alleged 32 delinquent accounts ranging in amounts from \$42 to \$11,019 for a total of more than \$40,000. In Applicant's reply to the SOR, she admitted all of the debts. Her admissions are accepted as findings of fact. In addition, the following findings of fact are supported by substantial evidence.

Applicant is a 45-year-old employee of a federal contractor. She is married, and she and her husband have three sons, ages 15, 13, and 12. She also has an adult daughter from a previous relationship. She is employed as a housekeeper at an air force base located in a western state. She earns \$14.75 per hour working a 40-hour week. She is seeking to obtain a security clearance for this job. She has not held a security clearance in the past. In addition, she recently obtained a part-time job working at fireworks shows. The work is irregular, and it pays about \$150 to \$200 per show. She has received clearance from another federal agency to handle explosive materials for these shows.<sup>2</sup>

Applicant and her husband are currently separated; she receives no financial support from him; and she is the sole source of income for herself and three sons. Her husband has an unstable employment history consisting of odd jobs, manual labor, and unemployment. He is currently unemployed, as far as Applicant knows, but receives no unemployment compensation because he quit his last job in about June 2010. In addition, according to Applicant, there are outstanding bench warrants for his arrest for domestic violence that happened in the last few years.

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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 here. 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 A.

Applicant has a long-term history of financial problems or difficulties.<sup>3</sup> She has not paid, settled, reduced the balance owed, or otherwise resolved any of the 32 debts in the SOR. In December 2010, she sought assistance from Consumer Credit Counseling (CCC) Services.<sup>4</sup> After reviewing her financial situation and developing a written budget, CCC recommended a debt-management plan consisting of paying \$300 monthly, with the money coming from stopping a \$300 monthly payment on a delinquent auto loan. She has not implemented the CCC plan or any other plan to address her indebtedness. She is hopeful that she can implement the CCC plan within the next few months.

Many of the 32 debts in the SOR stem from uninsured medical bills or medical bills Applicant was unable to pay. Per the SOR, it is estimated that 17 debts totaling about \$18,000 are for medical bills (SOR ¶¶ 1.a–1.j, 1.l–1.p, 1.ee, and 1.ff). The bills are for medical care provided to Applicant or her family members. Applicant’s overall financial situation can be described as living paycheck-to-paycheck, and she has no financial assets to address her bad debt.

### **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>5</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>6</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>7</sup> An

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<sup>3</sup> See Exhibits 1–7.

<sup>4</sup> Exhibit 6.

<sup>5</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>6</sup> 484 U.S. at 531.

<sup>7</sup> Directive, ¶ 3.2.

unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.<sup>8</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>9</sup> The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>10</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>11</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>12</sup> In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>13</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>14</sup> Substantial evidence means "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record."<sup>15</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 and material information, 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>16</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>8</sup> Directive, ¶ 3.2.

<sup>9</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>10</sup> Directive, Enclosure 3, ¶ E3.1.14.

<sup>11</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>12</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>13</sup> *Egan*, 484 U.S. at 531.

<sup>14</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

<sup>15</sup> Directive, Enclosure 3, ¶ E3.1.32.1.

<sup>16</sup> Executive Order 10865, § 7.

## Analysis

Under Guideline F for financial considerations,<sup>17</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>18</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>19</sup>

Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in 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 history raises security concerns because it indicates inability or unwillingness to satisfy debts<sup>20</sup> and a history of not meeting financial obligations<sup>21</sup> within the meaning of Guideline F. The facts are sufficient to establish these two disqualifying conditions. With that said, I attach little if any security significance to the bad debt attributable to 17 medical accounts for approximately \$18,000, because it was not caused by frivolous or irresponsible spending or living beyond one's means, but for necessary medical care and treatment. Bad debt tied to medical bills is not indicative of poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. It is certainly debatable if such debt is a true reflection of an individual's ability or willingness to satisfy debts or a good predictor of risk.<sup>22</sup>

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<sup>17</sup> AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

<sup>18</sup> 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); and see ISCR Case No. 07-09966 (App. Bd. Jun. 25, 2008) (In security clearance cases, "the federal government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner.") (citation omitted).

<sup>19</sup> AG ¶ 18.

<sup>20</sup> AG ¶ 19(a).

<sup>21</sup> AG ¶ 19(c).

<sup>22</sup> See generally Liz Pulliam Weston, *Why Medical Debts Shouldn't Count*, published Nov. 19, 2007, at <http://articles.moneycentral.msn.com> (available via a Google or Yahoo! search) (this is a personal-finance article that discusses whether medical debt indicates that a creditor or borrower is high risk).

There are six mitigating conditions to consider under Guideline F. Any of the following may mitigate security concerns:

AG ¶ 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;

AG ¶ 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;

AG ¶ 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;

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;<sup>23</sup>

AG ¶ 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; or

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

I have considered all the mitigating conditions, and none, individually or in combination, are sufficient to overcome and mitigate the security concerns. It is probable that Applicant's financial problems are due, in part, to her marriage, which is in a state of flux, underemployment on her part, and her husband's unstable employment history. These are circumstances largely beyond her control. Nevertheless, the evidence supports a conclusion that her financial house is in serious disrepair. Discounting the bad debt due to medical bills, she is still facing 15 debts for about \$22,000, which includes two student loans (SOR ¶¶ 1.q and 1.z). She has done little to address the bad debt. Although she obtained a debt-management plan from CCC, she has not implemented the plan, much less established a track record of adherence to the

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<sup>23</sup> ISCR Case No. 99-0201 (App. Bd. Oct. 12, 1999) ("[T]he concept of 'good faith' requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. Such standards are consistent with the level of conduct that must be expected of persons granted a security clearance.") (citations omitted); ISCR Case No. 02-30304 (App. Bd. Apr. 20, 2004) (relying on a legally available option, such as Chapter 7 bankruptcy, is not a good-faith effort) (citations omitted); ISCR Case No. 99-9020 (App. Bd. Jun. 4, 2001) (relying on the running of a statute of limitations to avoid paying a debt is not a good-faith effort).

plan. Given these circumstances, it is simply too soon to tell if Applicant's problematic financial history is a thing of the past or a harbinger of things to come.

To conclude, the evidence of Applicant's financial problems, past and present, justifies current doubts about her 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>24</sup> and Applicant's favorable evidence. Applicant impressed me as a hard worker, and she was sincere and candid in her testimony. But her problematic financial history is unresolved and ongoing, and that history is simply inconsistent with the high standards that apply to those who are granted access to classified information. Perhaps in the future when Applicant has made a good-faith effort to repay or resolve her bad debt, or there are clear indications that her financial problems are being resolved or under control, she can reapply for a security clearance with the sponsorship of an employer. Based on the record before me, I conclude Applicant did not meet her ultimate burden of persuasion to obtain a favorable clearance decision.

### **Formal Findings**

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a–1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Subparagraphs 1.l–1.p:	For Applicant
Subparagraphs 1.q–1.dd:	Against Applicant
Subparagraphs 1.ee–1.ff:	For 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).