



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



In the matter of: )  
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----- ) ISCR Case No. 10-02920  
 )  
Applicant for Security Clearance )

**Appearances**

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

November 28, 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 consisting of eight delinquent accounts and failure to file federal income tax returns for tax years 2008 and 2009. To date, all these matters remain unresolved, although he intends to seek relief via a Chapter 13 bankruptcy case. Applicant failed to present sufficient evidence to overcome the security concerns stemming from his 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 December 23, 2010, the Defense Office of Hearings and Appeals (the Agency) 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.<sup>2</sup> The case was assigned to another administrative judge on April 20, 2011. The case was reassigned to me June 10, 2011. The hearing took place August 3, 2011. The transcript (Tr.) was received August 18, 2011.

## Findings of Fact

The SOR alleged eight delinquent accounts and failure to file federal income tax returns for tax years 2008 and 2009. In Applicant's replies to the SOR, he accepted responsibility for the debts and the tax returns. His admissions are accepted as findings of fact. In addition, the following findings of fact are supported by substantial evidence.

Applicant is a 48-year-old employee of a federal contractor. His employment history includes honorable active duty service in the U.S. Air Force during 1987–2007, when he retired as a technical sergeant (pay grade E-6). He worked as a security officer for a private security company from April 2007 to August 2007.<sup>3</sup> He was unemployed from December 2007 to August 2008. He resumed employment in September 2008 as a security officer for a private security company. He held that job until June 2009, when he began his current job as a unit training monitor.

Upon his retirement, Applicant planned to open a business running a mobile coffee shop. He anticipated operating the business on a local military installation. He obtained a loan for \$80,000 to finance the business. The loan resulted in a second mortgage on his house. He also used money that he had saved. Unexpectedly, he was unable to secure a contract to operate on the local military installations and found

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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> Applicant submitted two Answers to the SOR, the first dated January 5, 2011, the second dated March 18, 2011.

<sup>3</sup> Applicant was on terminal leave from the Air Force during this period, and he was in that status until his official retirement date in November 2007. As such, he received full pay and allowances during this period.

himself with a trailer, equipment, and supplies he had purchased for his coffee business. He was soon unable to make timely payments on his mortgage loan, his second mortgage loan, credit card bills, and recurring monthly expenses. Also during this period, he encountered unforeseen expenses (for example, auto repairs, home repairs, etc.), which made his situation more difficult. The result of these various circumstances was Applicant was left living paycheck-to-paycheck.<sup>4</sup> In time, he lost his house to foreclosure in about December 2009.

As alleged in the SOR, and established by Applicant's admissions and the documentary evidence, the eight delinquent debts consist of the following: (1) a \$26 utility account placed for collection; (2) a \$72 utility account placed for collection; (3) a \$54 medical account placed for collection; (4) a \$12,051 credit card account placed for collection; (5) a \$11,535 credit card account that was charged off; (6) a past-due second mortgage loan with a balance \$79,583; (7) a \$10,497 credit card account that was charged off; and (8) a \$365 charged-off account. All these debts remain unpaid and unresolved.<sup>5</sup>

He plans to address his indebtedness via a Chapter 13 bankruptcy proceeding, which will allow him to repay creditors under a court-approved plan. He paid a \$250 fee to retain a law firm to represent him, but a petition has not yet been filed in bankruptcy court. He has been considering a Chapter 13 bankruptcy case since sometime in 2009.<sup>6</sup>

Applicant has not filed federal income tax returns for tax years 2008 and 2009. He attributes this failure to various complications, including difficulty getting work performed by a tax preparer and a lack of documentation. He understands he does not owe back taxes for these years, but has not yet filed the required returns. Likewise, he has not filed a federal income tax return for tax year 2010.<sup>7</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>4</sup> Tr. 49.

<sup>5</sup> Tr. 64–70; 74–79.

<sup>6</sup> Exhibit 2.

<sup>7</sup> Failure to file the 2010 federal income tax return was not alleged in the SOR. Accordingly, I considered it for the limited purposes of evaluating Applicant's claim of extenuation, mitigation, or charged circumstances, and when assessing the evidence under the whole-person concept.

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 *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 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 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.

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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.

<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).

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 or financial problems or difficulties.<sup>20</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>21</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. The eight delinquent accounts raise security concerns because they indicate inability or unwillingness to satisfy debts<sup>22</sup> and a history of not meeting financial obligations<sup>23</sup> within the meaning of Guideline F. The facts are sufficient to establish these two disqualifying conditions. In addition, Applicant's failure to file federal income tax returns for two recent tax years is of concern.<sup>24</sup> Taken together, the multiple

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<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> 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>21</sup> AG ¶ 18.

<sup>22</sup> AG ¶ 19(a).

<sup>23</sup> AG ¶ 19(c).

<sup>24</sup> AG ¶ 19(g).

delinquent accounts and failure to file federal tax returns show that Applicant's financial house is in serious disrepair.

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>25</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 especially considered the mitigating condition at AG ¶ 20(b), given the business failure and other unexpected problems (to include underemployment and unemployment) that Applicant encountered after his retirement from military service. Nevertheless, none of the mitigating conditions, individually or in combination, are sufficient to overcome and mitigate the security concerns.

The evidence of Applicant's financial problems justifies current doubts about his judgment, reliability, and trustworthiness. Following *Egan* and the clearly-consistent

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<sup>25</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).

standard, I resolve these doubts in favor of protecting national security. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I gave due consideration to the whole-person concept<sup>26</sup> and Applicant's favorable evidence, to include his 20 years of honorable military service. And I gave substantial weight to the business failure experienced by Applicant as well as the other unexpected problems. These were circumstances largely beyond his control that had a deleterious or adverse effect on his financial situation.

With that said, he has done little to help himself since beginning his full-time employment for a federal contractor in June 2009. For example, although he has talked about pursuing a Chapter 13 bankruptcy case since 2009, a petition has not yet been filed in bankruptcy court. At present, Applicant's problematic financial history is wholly unresolved and ongoing. That history is simply inconsistent with the 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 these debts, or there are clear indications that his financial problems are being resolved or under control, he can reapply for a security clearance with the sponsorship of an employer. But based on the record before me, it is simply too soon to tell if or when Applicant will resolve his financial problems. Applicant did not meet his 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:	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>26</sup> AG ¶ 2(a)(1)–(9).