



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



In the matter of: )  
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----- ) ISCR Case No. 10-08308  
 )  
Applicant for Security Clearance )

**Appearances**

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

August 25, 2011

**Decision**

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for a security clearance to work in the defense industry. The evidence shows he has a history of financial problems or difficulties (multiple delinquent debts). His indebtedness appears to be related to a failed business and marriage. He just recently sought relief from his indebtedness via a Chapter 7 bankruptcy case, which is now pending. At this point, it is simply too soon to tell if the pending Chapter 7 bankruptcy case will be the end of his financial problems or is a harbinger of things to come. 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 10, 2011, the Defense Office of Hearings and Appeals (the Agency) issued a statement of reasons (SOR) explaining that it was not 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 answered the SOR and requested a hearing. The case was assigned to me April 28, 2011. The hearing took place June 6, 2011. The transcript (Tr.) was received June 15, 2011.

The record was kept open for 30 days, to July 6, 2011, to allow Applicant an opportunity to submit additional documentary information about his Chapter 7 bankruptcy case. He made a timely submission, and without objections, those matters are marked and admitted as Exhibit B.

## Findings of Fact

The SOR alleged 32 delinquent debts ranging in amounts from \$53 to \$11,959 for a total of approximately \$104,000. Applicant's answers were mixed, with both denials and admissions. His admissions are accepted as findings of fact. In addition, the following findings of fact are supported by substantial evidence.

Applicant is a 40-year-old employee of a federal contractor. He is seeking an industrial security clearance for employment as an electronics technician. He is recently divorced from his first wife. The marriage produced two children, ages 14 and 10, both of whom live with their mother. Applicant pays child support and has reduced a sizeable arrearage down to the current level of about \$1,250.

Applicant has a problematic financial history (multiple delinquent debts), which he does not, in general, dispute.<sup>2</sup> He attributes his indebtedness to a failed trucking company he owned and operated during the five-year period of 2003–2007.<sup>3</sup> The company was never profitable, and then in 2006, Applicant and his wife separated.

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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 contained in Enclosure 2 to the Directive.

<sup>2</sup> Exhibits 2–6.

<sup>3</sup> Tr. 37–44.

Overwhelmed, his business declined further and he terminated the company's operation in about August 2007.

That same year, Applicant moved across country and relocated to his current domicile. The move resulted in a period of brief unemployment, as he began working as an electronics technician for a defense contractor in November 2007. He worked there through December 2007, when the contract was awarded to another company, and he followed the contract, beginning employment with this defense contractor in January 2008. He remained employed there until November 2009, when he accepted a job offer with the defense contractor that is currently sponsoring him for a clearance. He worked there for less than 60 days, when he was released or put on leave without pay pending resolution of his security clearance, for which he completed an application in February 2010.<sup>4</sup> He was then unemployed until June 2011, when he began another job as an electronics technician. During this period, he received unemployment compensation of about \$1,700 monthly.

At hearing, Applicant admitted nearly all the debts alleged in the SOR.<sup>5</sup> He took issue with some of the amounts due, asserting balances had been reduced, and he claimed one or two accounts may be duplicates. But he did not present any documentary evidence to support his assertions or to show that he paid, settled, or otherwise resolved the debts. He did present a June 2, 2011 letter from a bankruptcy attorney in which the attorney explained that his law office had been retained for the purposes of preparing and filing a Chapter 7 case on Applicant's behalf within one to two weeks.<sup>6</sup>

In his post-hearing submission, Applicant presented paperwork related to his Chapter 7 case, to include the petition, which was filed June 28, 2011.<sup>7</sup> The petition lists \$17,000 in assets and \$71,061 in liabilities on Schedule E for unsecured priority claims and on Schedule F for unsecured nonpriority claims (unsecured debts). The Schedule E claims consist of \$2,055 in back taxes owed to the IRS and \$1,250 owed to a child-support agency. The Schedule F lists claims for 31 creditors for \$67,756. When the record closed, Applicant's Chapter 7 case was pending with the bankruptcy court.

### **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

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<sup>4</sup> Exhibit 1.

<sup>5</sup> Tr. 48-65.

<sup>6</sup> Exhibit A.

<sup>7</sup> Exhibit B.

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>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

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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).

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>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, 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. The evidence raises security concerns because it indicates 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.

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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> 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>21</sup> AG ¶ 18.

<sup>22</sup> AG ¶ 19(a).

<sup>23</sup> AG ¶ 19(c).

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;

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. Applicant's problematic financial history is due to the failure of his trucking company. That failure was, in part, connected to his failed marriage. Since ending the business and marriage, he relocated and resumed employment, but experienced a period of unemployment during 2009–2011. These circumstances explain why he incurred the debt, the circumstances were largely beyond his control, and they are unlikely to recur. Nevertheless, since 2007, he has taken few measurable steps toward putting his financial house in good order. He did not present any reliable documentary evidence showing that he paid, settled, or otherwise resolved the debts in question. And he has only recently sought relief via the Chapter 7 bankruptcy case, which is now pending. Under binding DOHA Appeal Board caselaw, obtaining relief via a Chapter 7 bankruptcy case is not a "good-faith effort" to resolve one's debts. Assuming the bankruptcy court grants him a discharge of his debts, what is missing here is a post-bankruptcy track record of financial responsibility and living within his means. At this point, it is simply too soon to tell if the pending Chapter 7 bankruptcy case will be the end of his financial problems or is a harbinger of things to come.

To conclude, Applicant did not present sufficient evidence to rebut, explain, extenuate, or mitigate the security concerns. In reaching this conclusion, I gave due consideration to the nine factors of the whole-person concept.<sup>24</sup> Accordingly, I conclude that 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.ff:	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>24</sup> AG ¶ 2(a)(1)–(9).