



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



In the matter of: )  
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----- ) ISCR Case No. 10-08508  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: William T. O’Neil, Esq., Department Counsel  
For Applicant: *Pro se*

September 6, 2011

**Decision**

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 recurring financial problems or difficulties consisting of: (1) a 1996 Chapter 7 bankruptcy case resulting in discharge; (2) a 2005 Chapter 7 bankruptcy case resulting in discharge; and (3) 12 delinquent debts for about \$18,000 in total, which are currently unresolved. Applicant failed to present sufficient evidence to overcome the security concerns. 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 April 13, 2011, 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. Neither Applicant nor Department Counsel requested a hearing, and so, the case will be decided on the written record.<sup>2</sup>

On or about June 7, 2011, the Agency submitted its written case consisting of all relevant and material information that could be adduced at a hearing.<sup>3</sup> This so-called file of relevant material (FORM) was mailed to Applicant and received by her on or about June 21, 2011. She then had a 30-day period to submit a response setting forth objections, rebuttal, extenuation, mitigation, or explanation. Applicant timely replied, and her reply consisted of a one-page memorandum and a one-page certificate of financial counseling, which are marked and admitted as Exhibits A and B. The case was assigned to me August 15, 2011.

## Findings of Fact

The SOR alleged a 1996 Chapter 7 bankruptcy case, a 2005 Chapter 7 bankruptcy case, and 12 collection or charged-off accounts, ranging in amounts from \$493 to \$4,562 for a total of about \$18,208. In Applicant's six-page reply to the SOR, she admitted the two bankruptcy cases and the 12 debts, although she could not confirm the amounts owed as she thought they were for lesser amounts. She also detailed circumstances surrounding her history of financial problems. Her admissions are accepted as findings of fact. In addition, the following findings of fact are supported by substantial evidence.

Applicant is a 46-year-old employee of a federal contractor. She has never married and has one child, a daughter, born in 1981, who is now an adult and living on her own. Applicant's employment history is summarized as follows: (1) she worked as a

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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> Directive, Enclosure 3, ¶ E3.1.7.

<sup>3</sup> The file of relevant material consists of Department Counsel's written brief and supporting documents, some of which may be identified as exhibits in this decision.

supply/procurement technician from October 1984 to January 2008 as a federal employee of a military department; (2) she was unemployed from January 2008 to August 2008; (3) she worked as a logistics specialist for a federal contractor from August 2008 to December 2008; (4) she was unemployed from January 2009 to October 2009; (5) she worked as a marking technician from October 2009 to February 2010; and (6) she began her current employment as an administrative specialist for a federal contractor in March 2010.

Applicant attributed the 1996 Chapter 7 bankruptcy to a combination of the loss of financial support from her father after his death, assuming her father's credit card debt to help her mother, and her own illness.<sup>4</sup> She attributed the 2005 Chapter 7 bankruptcy to an increase in household living expenses when her daughter moved out and illness.<sup>5</sup> She attributes her current situation to unemployment in 2008 and 2009; in addition, her boyfriend lost a job in 2009, although he found another the same year, but it became a part-time job in January 2011.<sup>6</sup>

The 12 delinquent debts in the SOR stem from collection or charged-off accounts. Applicant did not present any documentary evidence showing she has paid, settled, reduced the balance owed, or otherwise resolved these 12 debts. She explained that she is involved with financial counseling on an ongoing basis.<sup>7</sup> She is endeavoring to create a financial stronghold before engaging in settlement or repayment discussions with her creditors. She also noted that she has received a merit increase of her salary along with two promotions with pay increases.

### **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>8</sup> As noted by the Supreme Court in *Department of Navy v. Egan*, "the clearly consistent

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<sup>4</sup> Answer to SOR.

<sup>5</sup> Answer to SOR.

<sup>6</sup> Answer to SOR.

<sup>7</sup> Exhibits A and B.

<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).

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.

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

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<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).

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 recurring financial problems or difficulties. Two Chapter 7 bankruptcy cases within the last 15 years and the 12 delinquent debts 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.

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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).

There are six mitigating conditions to consider under Guideline F.<sup>24</sup> 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 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 the various circumstances she has explained and that these circumstances were largely beyond her control. She is also making some effort, via financial counseling, to put her financial house in good order. Nevertheless, the evidence supports a conclusion that Applicant's financial house has been in disrepair for a lengthy period, since at least the 1996 bankruptcy. It is also noteworthy that she went through both the 1996 and 2005 Chapter 7 bankruptcy cases while holding a full-time job as a federal employee. Moreover, what

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<sup>24</sup> AG ¶ 20(a)–(f).

<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).

is missing here is a realistic plan to resolve the 12 collection and charged-off accounts. Other than financial counseling, which is a prudent step, Applicant has taken no action in this regard. Given the lack of a realistic plan or a serious effort to resolve the 12 collection and charged-off accounts, it is difficult to predict if or when Applicant will resolve her indebtedness. Time will tell if Applicant has both the ability and willingness to resolve her financial problems.

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>26</sup> and Applicant's favorable evidence. Nevertheless, 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.n:	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).