



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



In the matter of: )  
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----- ) ISCR Case No. 10-10399  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Daniel F. Crowley, 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 his 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 15 accounts totaling about \$27,000 in bad debt, the vast majority of which is currently unresolved. 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 February 15, 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 and requested a hearing. The case was assigned to me April 28, 2011. The hearing took place June 7, 2011. The transcript (Tr.) was received June 16, 2011.

## Findings of Fact

The SOR alleged 15 collection, charged-off, or past-due accounts, ranging in amounts from \$157 to \$7,726 for a total of about \$27,070. In Applicant's reply to the SOR, he admitted the 15 debts. His admissions are accepted as findings of fact. In addition, the following findings of fact are supported by substantial evidence.

Applicant is a 38-year-old employee of a federal contractor. His first marriage ended in divorce, and he married his current wife in 2008. They have a three-year-old daughter. He is employed as a mechanic technician and works at a missile range. He is seeking to obtain a security clearance for this job.

Applicant's employment history includes nearly 15 years of active duty military service in both the U.S. Marine Corps and the U.S. Army.<sup>2</sup> He served as a tanker in the Marine Corps during 1992–1999. After a two-month break in service, he then served as a tanker in the Army during 2000–2007. While in the Army, he twice deployed to Iraq where he was involved in combat operations while serving with a unit of an armored cavalry regiment. He served his first tour in Iraq from April 2003 to April 2004, and he served his second tour in Iraq from February 2005 to February 2006. His decorations, medals, badges, citations, and campaign ribbons are extensive, to include the Army Commendation Medal with Valor Device (V Device), which was awarded to Applicant for each of his deployments to Iraq. Although the citations that accompany such medals are not in the record, it is common knowledge within the Defense Department that the V

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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> Exhibits H and I.

Device is presented to a soldier for valorous actions in direct contact with an enemy force. He was honorably discharged as a sergeant (pay grade E-5) in May 2007.

As a result of his military service, Applicant received a 50 percent disability rating from the Department of Veterans Affairs.<sup>3</sup> He explained the rating is based on a combination of degenerative joint disease in his knees, arthritis in a shoulder, and posttraumatic stress disorder (PTSD), which was diagnosed after his second tour of duty in Iraq. He takes medication daily for the PTSD. He receives disability compensation of about \$936 per month.

After his honorable discharge from the Army, Applicant worked as a maintenance worker for \$12 per hour for a county department of transportation from July 2007 to August 2008. He and his wife then decided to relocate to their current domicile due to a lower cost of living. He was unemployed from August 2008 to July 2009. He began working as a mechanic for \$14 per hour for a federal contractor in July 2009. He worked there until he began his current job in about November 2010. He is currently earning about \$21 per hour.

Credit reports, dated from 2002 to 2011, reveal that Applicant has a negative or derogatory credit history.<sup>4</sup> Each of the seven credit reports has derogatory accounts. He conceded that he has not handled money well and that his wife has taken over responsibility for the household finances and bill paying. Concerning the 15 delinquent debts in the SOR, he presented proof of payment in full for the \$157 collection account in SOR ¶ 1.i;<sup>5</sup> he presented proof of a \$30 payment for the \$696 collection account in SOR ¶ 1.a;<sup>6</sup> and he presented proof of a \$40 payment and a \$60 payment for the \$1,762 collection account in SOR ¶ 1.n.<sup>7</sup> He also presented proof of payment in full of a medical collection account for about \$225, which was not alleged in the SOR.<sup>8</sup> Otherwise, he did not present any documentary evidence showing he has paid, settled, reduced the balance owed, or otherwise resolved the other delinquent debts in the SOR. Those debts remained unresolved. His general plan is to start with the smallest debt, repay it or settle it, and then address the next smallest debt.<sup>9</sup> He testified that he

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<sup>3</sup> Tr. 66–68.

<sup>4</sup> Exhibits 5–11.

<sup>5</sup> Exhibits B, C, and 11.

<sup>6</sup> Exhibit D.

<sup>7</sup> Exhibits A, C, and D.

<sup>8</sup> Exhibits E, F, and G.

<sup>9</sup> Tr. 75–76.

and his wife are in good standing with their current recurring bills (e.g., rent, utilities, etc.),<sup>10</sup> and that they now have a positive cash flow of about \$500 monthly.<sup>11</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.

It is well-established law that no one has a right to a security clearance.<sup>12</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>13</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>14</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>15</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>16</sup> The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>17</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate

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<sup>10</sup> Tr. 76.

<sup>11</sup> Tr. 42.

<sup>12</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>13</sup> 484 U.S. at 531.

<sup>14</sup> Directive, ¶ 3.2.

<sup>15</sup> Directive, ¶ 3.2.

<sup>16</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>17</sup> Directive, Enclosure 3, ¶ E3.1.14.

facts that have been admitted or proven.<sup>18</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>19</sup> In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>20</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>21</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>22</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>23</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>24</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

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<sup>18</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>19</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>20</sup> *Egan*, 484 U.S. at 531.

<sup>21</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

<sup>22</sup> Executive Order 10865, § 7.

<sup>23</sup> AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

<sup>24</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).

questions about an individual's reliability, trustworthiness, and ability to protect classified information.<sup>25</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. The 15 accounts for about \$27,000 in bad debt raise security concerns because they indicate inability or unwillingness to satisfy debts<sup>26</sup> and a history of not meeting financial obligations<sup>27</sup> within the meaning of Guideline F. The facts are sufficient to establish these two disqualifying conditions.

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>28</sup>

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<sup>25</sup> AG ¶ 18.

<sup>26</sup> AG ¶ 19(a).

<sup>27</sup> AG ¶ 19(c).

<sup>28</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).

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 periods of underemployment and unemployment after his discharge from the Army. These were circumstances largely beyond his control. He has also made some effort to repay his debts by paying off two collection accounts and making payments on two others. Nevertheless, the evidence supports a conclusion that Applicant's financial house is in serious disrepair as the vast majority of the bad debt is unresolved. Although Applicant has a general plan to address his bad debt, what is missing here is a plan coupled with a measurable track record of actions taken in furtherance of that plan. At this point, Applicant has done little to address his bad debt. Given these circumstances, it is difficult to predict if or when Applicant will put his financial house in good order.

To conclude, the evidence of Applicant's financial problems, past and present, justifies current doubts about his 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>29</sup> and Applicant's favorable evidence. In particular, I gave substantial weight to Applicant's honorable military service in both the Marine Corps and the Army. And I gave substantial weight to his two tours of duty in Iraq where he served with valor. But at this time, Applicant's 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 his bad debt, 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. Based on the record before me, I conclude 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
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Subparagraphs 1.a–1.n:	Against Applicant
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<sup>29</sup> AG ¶ 2(a)(1)–(9).

## **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