



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 10-10401  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Ray T. Blank Jr., Esq., Department Counsel  
For Applicant: *Pro se*

03/28/2012

**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 Applicant has a history of financial problems or difficulties consisting of (1) a Chapter 7 bankruptcy case ending in discharge in 2003, (2) unresolved state and federal tax liens, and (3) unresolved delinquent debts. He did not present documentary evidence showing that he paid, settled, reduced the balances owed, disputed, or otherwise resolved the tax liens or the debts. He does not have a realistic plan in place to resolve these matters. Applicant failed to present sufficient evidence to overcome the security concerns stemming from his problematic financial history. Accordingly, as discussed below, this case is decided against Applicant.

## Statement of the Case

Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> on or about November 14, 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 reasons 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 January 12, 2012. The hearing took place March 13, 2012. At hearing, the SOR was amended to correct a drafting error concerning the numbering of certain subparagraphs of the SOR.<sup>2</sup> The transcript (Tr.) was received March 22, 2012.

## Findings of Fact

The SOR alleged (1) a Chapter 7 bankruptcy case ending in discharge in 2003, (2) seven unpaid state tax liens, (3) three unpaid federal tax liens, and (4) 21 collection or charged-off accounts in amounts ranging from \$30 to \$2,993 for a total of about \$8,000. In Applicant's reply to the SOR, he admitted the factual allegations except for two state tax liens, and he provided explanations. His admissions are accepted and adopted and incorporated herein as findings of fact. Along with his admissions, the documentary evidence establishes all of the factual allegations.<sup>3</sup> In addition, the following findings of fact are supported by substantial evidence.

Applicant is a 52-year-old employee of a federal contractor. He has worked in the construction industry for many years. He has been continuously employed as a project manager for the same company since 2001. He is seeking to obtain a security clearance for his current job, which pays him an annual salary of \$115,000.<sup>4</sup>

Applicant married in 1986; he and his wife separated in 1998; and they divorced in 2000. He has three sons from the marriage, the youngest of whom is 19 years old and lives with him. The two older sons live on their own. Upon separation, the sons lived with their mother for a few months before returning to live with their father in late 1998,

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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> Tr. 18–19.

<sup>3</sup> Exhibits 2–6.

<sup>4</sup> Tr. 60.

when he assumed the role of primary caregiver to his sons. Although divorced in 2000, post-divorce litigation over child support and child custody went on for several years, which cost Applicant a substantial amount of money in attorney's fees. Those matters ended around 2005 or 2006.

Applicant's Chapter 7 bankruptcy case followed shortly after his divorce. He filed, individually, for bankruptcy in late 2002, and the court granted him a discharge in 2003. At the hearing, he did not recall the total amount of assets and liabilities in the bankruptcy. His bankruptcy was preceded by a brief period (about three months) of unemployment in 2001.

Applicant lived in the same Mid-Atlantic state for many years until moving to his state of current residence in mid-2010. Remaining in his former state of residence is seven unpaid tax liens for a total of about \$21,141. The seven liens were filed in various years such as 1993, 1994, 1998, 2005, 2008, and 2011. In addition to the state tax liens, the IRS filed tax liens against Applicant in 1991, 1995, and 1996. In total, these liens amount to about \$25,553.

Applicant has not in the recent past contacted state or federal tax authorities to resolve the tax liens. He did not present documentary evidence showing that he has paid, settled, reduced the balances owed, disputed, or otherwise resolved the tax liens. Likewise, he did not present documentary evidence showing that he has paid, settled, reduced the balances owed, disputed, or otherwise resolved the 21 collection or charged-off accounts.

Applicant's plan to resolve his financial problems is to wait until he has a sufficient sum of money to allow him to negotiate lump-sum settlements with his creditors. To that end, in October 2011, he applied for a personal line of credit or loan for about \$56,000, but his application was not approved.<sup>5</sup> He now plans to obtain a loan against his 401(k) account and use that money to negotiate with his creditors. But he is currently unable to borrow against his 401(k) account because he already has two loans against it.<sup>6</sup> He previously contacted a financial-counseling organization for assistance with his financial problems.<sup>7</sup> That organization advised him to pursue bankruptcy proceedings, but he declined to do so because he desires to satisfy the debt.

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<sup>5</sup> Exhibit 3; Tr. 67–69.

<sup>6</sup> Tr. 72.

<sup>7</sup> Tr. 69.

Applicant has a good record of employment as verified by written performance reports and other documentary evidence.<sup>8</sup> In addition, he has a good record of involvement in community and church activities.<sup>9</sup>

### Law and Policies

It is well-established law that no one has a right to a security clearance.<sup>10</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>11</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>12</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>13</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>14</sup> The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>15</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>16</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>17</sup> In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>18</sup>

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<sup>8</sup> Exhibits A and B.

<sup>9</sup> Exhibit C.

<sup>10</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>11</sup> 484 U.S. at 531.

<sup>12</sup> Directive, ¶ 3.2.

<sup>13</sup> Directive, ¶ 3.2.

<sup>14</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>15</sup> Directive, Enclosure 3, ¶ E3.1.14.

<sup>16</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>17</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>18</sup> *Egan*, 484 U.S. at 531.

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>19</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>20</sup> Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

### Discussion

Under Guideline F for financial considerations,<sup>21</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>22</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>23</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.

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

<sup>20</sup> Executive Order 10865, § 7.

<sup>21</sup> AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

<sup>22</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>23</sup> AG ¶ 18.

The evidence supports a conclusion that Applicant has a longstanding history of financial problems or difficulties. The Chapter 7 bankruptcy case, the unresolved state and federal tax liens, and the unresolved 21 collection and charged-off accounts raise security concerns. These matters indicate inability or unwillingness to satisfy debts<sup>24</sup> and a history of not meeting financial obligations<sup>25</sup> within the meaning of Guideline F. The facts are sufficient to establish these two disqualifying conditions, and the facts also suggest financial irresponsibility.

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>26</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.

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<sup>24</sup> AG ¶ 19(a).

<sup>25</sup> AG ¶ 19(c).

<sup>26</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).

None of the mitigating conditions, individually or in combination, are sufficient to overcome and mitigate the security concerns. Concerning AG ¶ 20(b), I considered Applicant's three-month period of unemployment during 2001, but it is too remote in time to explain his present circumstances. I also considered his separation in 1998, his divorce in 2000, and the post-divorce litigation that followed. I am certain these matters had a negative effect on his overall financial situation and ability to meet his financial obligations. But these matters ended some years ago as well, and they have limited effect on his current situation.

Applicant did not produce sufficient evidence to show that he is serious about putting his fiscal house in order. I reach this conclusion because he has done little to help himself at present. For example, several of the delinquent debts are for less than \$100 and could have been resolved without much difficulty given his six-figure salary. What is missing here is a realistic plan to address the state and federal tax liens and the delinquent debts. Although he has a generalized plan to obtain a large sum of money to use in negotiations with his creditors, that money is not readily available. At this point, his plan is considered a promise to take action in the future, when and if circumstances allow it. His promise, however sincere, is insufficient evidence in mitigation. Moreover, there is no indication of a favorable upward trend upon which to rely. Looking forward, it is most likely that his financial problems will continue.

The evidence of Applicant's unresolved and ongoing financial problems 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 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>27</sup> Based on the evidence before me, 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

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<sup>27</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