



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 11-01833  
 )  
Applicant for Security Clearance )

**Appearances**

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

10/26/2012

**Decision**

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to revoke his eligibility for a security clearance to work in the defense industry. The evidence shows Applicant has a history of financial problems related to marital troubles, which is a circumstance largely beyond his control, and it is a circumstance unlikely to recur given his recent divorce. He has made a good-faith effort to resolve some of the financial problems, and he has a reasonable plan to resolve others. Applicant presented sufficient evidence to mitigate the security concerns stemming from his problematic financial history. Accordingly, this case is decided for Applicant.

## Statement of the Case

Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> on or about April 18, 2012, the Defense Office of Hearings and Appeals (DOHA) sent Applicant 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 timely answered the SOR and requested a hearing. The hearing took place September 20, 2012. The transcript (Tr.) was received September 28, 2012.

The hearing record was kept open until October 24, 2012, to allow Applicant to submit additional documentary evidence. Those matters were timely received and are admitted without objection as Applicant Exhibit 2.

## Findings of Fact

The SOR alleged the following adverse financial matters: (1) an unpaid state tax lien for \$1,651; (2) four collection or charged-off accounts for a total of about \$6,656; (3) first and second mortgage loans in foreclosure; and (4) failure to file state and federal income tax returns for 2009, 2010, and 2011. His answer to the SOR was mixed with admissions and denials, and included documentary information, all of which is considered to be part of his answer. His admissions are accepted and adopted and incorporated as findings of fact. In addition, the following findings of fact are supported by substantial evidence.

Applicant is a 43-year-old field supervisor who is a part-time employee of a company engaged in defense contracting. He has had this job since August 2009. He is seeking to retain a security clearance previously granted to him. In addition to his part-time job, he has a full-time job as a firefighter with a county fire department. He has held this job since March 2008. According to his federal income tax returns, his adjusted gross income was \$63,416 for 2009, \$75,758 for 2010, and \$78,094 for 2011.<sup>2</sup> He may receive a promotion and pay raise in his firefighter job, although that matter is pending and it may or may not occur.<sup>3</sup>

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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 Exhibit 1-G.

<sup>3</sup> Applicant Exhibit 2.

Applicant's employment history also includes service in the U.S. military during 1988–2008. He served nearly six years as a firefighter followed by about 14 years as an aircraft loadmaster in the U.S. Air Force. His discharge certificate reflects a decorated career as a noncommissioned officer and an honorable discharge after 20 years of service.<sup>4</sup>

Applicant married in 1992, and the couple have three sons born of the marriage. They separated in early 2009, and they divorced in June 2012.<sup>5</sup> The three minor sons lived with their mother during the separation, and the two youngest sons continue to do so. The oldest son, who is no longer a minor, has recently begun service in the U.S. military. His wife was employed outside the home during the marriage working full-time and part-time jobs until about June 2009, a few months after the separation, when she lost her full-time job.<sup>6</sup>

After separating in early 2009, Applicant and his wife attempted, without success, to go through the divorce process without the assistance of counsel. His wife hired an attorney in 2010, and she filed the petition for divorce shortly thereafter in August 2010. A few months later in November 2010, the court issued an order requiring Applicant to pay interim support for his family in the amount of \$1,107 every two weeks. He paid that amount until the divorce was granted. Applicant and his wife attempted to resolve their differences through mediation in January 2011, but it was not successful. After some delay, the court heard the divorce case in April 2012, and issued a final decree of divorce in June 2012. Of relevance here, the court ordered the following:

- Applicant and his now ex-wife were awarded joint legal custody of their two minor sons, whose primary place of residence is with their mother.
- Applicant was ordered to pay child support of \$929 monthly beginning May 1, 2012, and then decreasing to \$636 monthly beginning June 1, 2013.
- Applicant was ordered to pay transitional spousal support of \$500 monthly for 60 consecutive months.
- Applicant and his ex-wife were ordered to file joint federal and state income tax returns for 2009, 2010, and 2011. Noting that his ex-wife had already filed separate returns for those years, the court ordered that she amend the returns to the status of married filing jointly.

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<sup>4</sup> Applicant Exhibit 1-L.

<sup>5</sup> Applicant Exhibit 1-K.

<sup>6</sup> Tr. 46.

Applicant estimates he incurred about \$3,000 in legal expenses for the divorce, all of which he has paid.<sup>7</sup>

Turning to the SOR allegations, Applicant has a history of financial problems, which he does not dispute. He fell behind on his financial obligations during the marital separation of 2009–2012, when he was providing financial support for his family and establishing a separate household. His problematic financial history is confirmed by the documentary information, which includes credit reports from 2010 and 2011.<sup>8</sup>

The first item in the SOR concerns the unpaid state tax lien for \$1,651 (SOR ¶ 1.a). After looking into this matter, Applicant learned that the tax lien was filed in 2009, and it resulted from unpaid sales and use tax on an automobile purchase in a state of former residence.<sup>9</sup> He resolved it to the satisfaction of the state through a series of payments in 2011 and 2012, and it is considered paid in full as of June 2012.<sup>10</sup>

The second item concerns four collection or charged-off accounts for a total of about \$6,656 (SOR ¶¶ 1.b, 1.c, 1.e, and 1.i). Applicant presented documentary proof of settlement in full as of August 2012 for a \$1,344 charged-off account (SOR ¶ 1.c).<sup>11</sup> He also presented documentary proof of a repayment agreement as of June 2012, and three subsequent monthly payments made under that agreement, for a \$2,544 charged-off account (SOR ¶ 1.i).<sup>12</sup> The other two accounts remain unresolved, but he intends to resolve them in the future.<sup>13</sup>

The third item concerns first and second mortgage loans in foreclosure (SOR ¶¶ 1.d and 1.f). As alleged, the first mortgage loan was past due in the amount of \$7,364 and had a balance of \$50,269, and the second was charged off in the amount of \$6,917. In the divorce decree, the court found that the property was in foreclosure or foreclosure had been completed, and Applicant and his ex-wife were equally entitled to any net proceeds and equally responsible for any liability from this property.<sup>14</sup>

Applicant and his wife bought the property in about 1994 and lived there until about 2000, when they departed for his next military assignment. They elected to rent

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<sup>7</sup> Applicant Exhibits 1-J and 2.

<sup>8</sup> Government Exhibits 2, 3, and 4.

<sup>9</sup> Tr. 49–52.

<sup>10</sup> Applicant Exhibit 1-A.

<sup>11</sup> Applicant Exhibit 1-C.

<sup>12</sup> Applicant Exhibit 1-I.

<sup>13</sup> Applicant Exhibits 1-B and 1-E.

<sup>14</sup> Applicant Exhibit 1-L.

the property instead of sell it, and they did so for several years. The monthly rental payment was sufficient to pay the first mortgage loan, and they paid the second out-of-pocket.

Accordingly to Applicant's longtime property manager, the neighborhood declined during the five-year period of 2003–2008, when she managed the property.<sup>15</sup> Applicant owed more on the house than the market value when she stopped managing the property. She stopped after concluding she could not secure responsible tenants that would take care of the property due to deterioration of the neighborhood. She suggested to Applicant in 2008 that he allow the property to go into foreclosure, although he continued to make payments and rent the property post-2008. She described Applicant as a responsible landlord who was responsive to tenant needs, he kept the property in good repair, and he made his mortgage payments on time. Like his other financial problems, Applicant was unable to maintain his monthly mortgage loan payments due to the extra financial strain caused by his marital troubles during 2009–2012. He is currently unaware of any net proceeds or liability from the foreclosure.

The fourth item concerns the unfiled state and federal income tax returns for 2009, 2010, and 2011 (SOR ¶¶ 1.g and 1.h). Like most married couples, Applicant and his wife filed their income tax returns under the filing status of married filing jointly. Following his divorce attorney's advice, Applicant delayed filing returns during the separation until the issue was resolved in the divorce proceedings. In the meantime, his wife filed returns under the status of married filing separately. As head of household, she claimed the minor children and thereby created an additional tax liability for Applicant. In early August 2012, Applicant, through counsel, moved the court for an order to show cause based on his ex-wife's noncompliance with the court's order to file joint tax returns.<sup>16</sup> The court scheduled the show-cause hearing for October 23, 2012, and Applicant's ex-wife failed to appear.<sup>17</sup> The court ruled that the ex-wife may be in violation of the court order, directed her to cooperate with filing amended returns within 30 days, scheduled another hearing for November 29, 2012, and directed both Applicant and his ex-wife to be present. The court reserved the right to impose sanctions.

Also in early August 2012, Applicant elected to file the 2009–2011 returns with the filing status of married filing separately.<sup>18</sup> He did so mainly to address the concerns in the SOR. His plan is to wait for the court to require his ex-wife to file amended returns, which will reduce the tax liability he is now facing. If that is unsuccessful, he intends to seek to modify the divorce decree by eliminating the requirement for

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<sup>15</sup> Applicant Exhibits 1-D and 1-F.

<sup>16</sup> Applicant Exhibit 1-L.

<sup>17</sup> Applicant Exhibit 2.

<sup>18</sup> Applicant Exhibits 1-G and 1-H.

transitional spousal support of \$500 monthly for 60 consecutive months. He expects that would result in sufficient cash flow to pay the taxes owed via repayment plans with federal and state tax authorities.

Applicant made a straightforward and well-organized presentation at the hearing. He did not quibble with his financial history and he did not attempt to shirk responsibility for the debts. Based on my opportunity to listen to his testimony and observe his demeanor, I found Applicant's hearing testimony to be credible and worthy of belief.

### **Law and Policies**

It is well-established law that no one has a right to a security clearance.<sup>19</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>20</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>21</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>22</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>23</sup> The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>24</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>25</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>26</sup> In *Egan*, the Supreme

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<sup>19</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>20</sup> 484 U.S. at 531.

<sup>21</sup> Directive, ¶ 3.2.

<sup>22</sup> Directive, ¶ 3.2.

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

<sup>24</sup> Directive, Enclosure 3, ¶ E3.1.14.

<sup>25</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>26</sup> Directive, Enclosure 3, ¶ E3.1.15.

Court stated that the burden of proof is less than a preponderance of the evidence.<sup>27</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>28</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>29</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>30</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>31</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>32</sup>

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<sup>27</sup> *Egan*, 484 U.S. at 531.

<sup>28</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

<sup>29</sup> Executive Order 10865, § 7.

<sup>30</sup> AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

<sup>31</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>32</sup> AG ¶ 18.

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 supports a conclusion that Applicant has a history of financial problems or difficulties. His unfavorable financial history indicates inability or unwillingness to satisfy debts<sup>33</sup> and a history of not meeting financial obligations.<sup>34</sup> The facts are more than sufficient to establish these disqualifying conditions. In addition, he failed to file state and federal income tax returns for the years 2009–2011.<sup>35</sup>

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>36</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

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<sup>33</sup> AG ¶ 19(a).

<sup>34</sup> AG ¶ 19(c).

<sup>35</sup> AG ¶ 19(g).

<sup>36</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).



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 the most pertinent here are AG ¶¶ 20(a), (b), (c), and (d). Applicant's financial troubles are largely due to marital troubles, which began in about 2009, when he and his wife separated. It costs more to maintain two households, and Applicant was also providing financial support, informally and under the interim support order, until the divorce was final, which occurred a few months ago. And he is now paying child support and transitional spousal support. The divorce decree did not resolve everything, however, as his ex-wife has not cooperated with filing amended returns for the years 2009–2011. Her recalcitrance resulted in a recent show-cause hearing, which the court will review within the next 30 days.

Concerning the matters in the SOR, Applicant resolved the unpaid state tax lien, settled one delinquent debt, entered into a repayment agreement for another delinquent debt, and filed the state and federal income tax returns. He has a plan in place to address the two unresolved delinquent debts. For the mortgage loans, the property is in foreclosure or foreclosure has been completed, as noted by the divorce court. Applicant is currently unaware of any net proceeds or liability from the foreclosure.

Based on the record as a whole, I conclude as follows: (1) Applicant's financial problems happened under circumstances that are unlikely to recur; (2) his financial problems resulted from his marital problems, which is a circumstance largely beyond his control; (3) there are now clear indications that his financial problems are being resolved and are under control; and (4) he has initiated a good-faith effort to resolve his financial problems. In other words, he is conducting himself as a responsible person, he is doing the best he can under difficult circumstances, and the trend line is favorable.

Of course, a security clearance case is not aimed at collecting debts.<sup>37</sup> Rather, the purpose is to evaluate an applicant's judgment, reliability, and trustworthiness consistent with the security guidelines in the Directive. In evaluating Guideline F cases, the Appeal Board has established the following commonsense standard:

The Board has previously noted that the concept of meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. However, an application is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an application demonstrate that he has established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his

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<sup>37</sup> ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

outstanding indebtedness is credible and realistic. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payments of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.<sup>38</sup>

Here, the evidence shows Applicant has established a documented track record of remedial actions sufficient to mitigate the security concerns under the Appeal Board's standard.<sup>39</sup>

Under *Egan* and the clearly-consistent standard, I have no doubts or concerns about Applicant's fitness or suitability for a security clearance. 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 also gave due consideration to the whole-person concept.<sup>40</sup> In particular, I gave substantial weight to Applicant's 20 years of honorable military service, which reflects highly on his judgment, reliability, and trustworthiness. Having done so, I conclude that Applicant met 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:	For Applicant
Subparagraphs 1.a–1.i:	For Applicant

### **Conclusion**

In light of the record as a whole, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Michael H. Leonard  
Administrative Judge

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<sup>38</sup> ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotations omitted).

<sup>39</sup> See Applicant Exhibits 1 and 2.

<sup>40</sup> AG ¶ 2(a)(1)–(9).