



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



In the matter of: )  
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----- ) ISCR Case No. 11-10484  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Gregg A. Cervi, Esq., Department Counsel  
For Applicant: *Pro se*

08/01/2013

**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. His history of financial problems or difficulties is largely due to a combination of medical issues, an inconsistent employment history, and a period of unemployment during 2009–2010. He initiated a good-faith effort to repay one of the largest of his delinquent debts, which is on schedule to be completed by the end of 2013. He has a reasonable plan to resolve his other delinquent debts. He presented sufficient evidence to explain, extenuate, and mitigate the financial considerations security concern. Accordingly, this case is decided for Applicant.

**Statement of the Case**

On February 1, 2013, the Department of Defense (DOD) sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly

consistent with the national interest to grant or continue access to classified information.<sup>1</sup> 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 case was assigned to me on June 6, 2013. The hearing took place by video teleconference as scheduled on July 15, 2013. The transcript was received on July 19, 2013.

### **Findings of Fact**

In his answer to the SOR, Applicant denied the five collection accounts in amounts ranging from \$39 to \$74 for a total of \$258 alleged in SOR ¶¶ 1.b–1.f. He stated that those accounts were unknown to him. He admitted the remaining allegations under Guideline F, which alleged 18 delinquent accounts in amounts ranging from \$50 to \$4,688 for a total of about \$14,419; 16 of those 18 accounts are medical collection accounts. 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 31-year-old employee of a federal contractor. He is seeking to obtain a security clearance for his job working as a military instructor. He began that job in December 2010, and he completed a security clearance application in March 2011.<sup>2</sup>

Applicant served on active duty in the U.S. Army during 2000-2003, and he held a security clearance during that time. He also performed reserve duty during 2005–2008. He received honorable discharges upon completion of active and reserve duty. His educational background includes a bachelor's degree in technology services management awarded in 2013. He is now pursuing a master's degree in a related field. He receives benefits via a G.I. Bill program to pay for his educational expenses.

After his discharge from active duty, Applicant worked as a prison guard from September 2003 to November 2004. He was laid off from that job because he was unable to perform the duties due to a medical condition (not an injury) that resulted in three surgical procedures. He then worked as a store clerk at a food store from November 2004 to June 2005; as a maintenance worker at a hotel from June 2005 to February 2006; and as a part-time, on an off/on basis, military subcontractor from January 2006 to August 2010. He was unemployed from May 2009 to November 2010. He received about \$330 weekly in unemployment compensation, although this was on

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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 Department of Defense 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> Exhibit 1.

an off/on basis depending if he was working his part-time job. He began his current job in December 2010, he earns about \$21 per hour, and he earned about \$47,000 in gross income in 2012.<sup>3</sup>

Applicant's common-law wife passed away in early 2010. They had a son in 2005. The child, who will attend second grade this fall, lives with Applicant. His son receives no financial assistance from the federal or state governments (e.g., Social Security).<sup>4</sup> Due to regular business travel for his current job, Applicant moved his mother from another state to his residence to enable her to care for his son.<sup>5</sup> His mother is otherwise unemployed, but she receives about \$968 monthly in Social Security disability payments, which she uses for her own bills and expenses.

There is substantial evidence establishing that Applicant has a history of financial problems or difficulties.<sup>6</sup> He believes his financial situation is now stable due to his current job, which he described as his best job in many years.<sup>7</sup> The 23 delinquent accounts in the SOR fall into four categories: (1) five collection accounts totaling \$258; (2) an unpaid judgment stemming from a deficiency balance after repossession of a vehicle; (3) a collection account stemming from a utility account; and (4) 16 medical collection accounts. Each category is discussed below.

The five collection accounts are unknown to Applicant. He contacted the alleged creditor and was informed that the creditor had no record of the accounts.<sup>8</sup>

The unpaid judgment of \$3,570 was obtained by a credit union in 2007. The amount is a deficiency balance after repossession of a vehicle. Applicant made payments on an irregular basis reducing the balance to about \$2,900 as of December 2012.<sup>9</sup> He then entered into a repayment agreement with the collection agency handling the account and made an initial payment of \$1,000, reducing the balance to about \$1,858. He agreed to make 12 monthly payments of about \$155, concluding in December 2013. He has made six monthly payments through June 2013.

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<sup>3</sup> Tr. 47–48.

<sup>4</sup> Tr. 48–49.

<sup>5</sup> Tr. 53–55.

<sup>6</sup> Exhibits 2–7.

<sup>7</sup> Tr. 52–53.

<sup>8</sup> Tr. 61–62.

<sup>9</sup> Exhibit A.

The \$128 collection account stems from a utility account Applicant had at a previous residence. Applicant provided a credible explanation that he paid the account a few years ago.<sup>10</sup>

The 16 medical collection accounts, which total about \$10,721, stem from medical expenses Applicant incurred during the 2004–2005 time frame when he underwent three surgical procedures for a condition related to his back. Eight of those accounts are held by the same creditor and total about \$7,905, about 74% of the delinquent medical debt. Applicant believes the medical accounts should have been covered under his then health insurance policy. None of the accounts are resolved, although Applicant has been in contact with the largest creditor.

Applicant's plan is to continue making the \$155 monthly payment and pay off the judgment as scheduled in December 2013. He then intends to establish a repayment plan with the largest medical creditor using that same \$155 monthly payment. He intends to address the other debts thereafter or sooner depending on his cash flow.

Applicant presented character evidence in the form of testimony from a coworker as well as three letters of recommendation.<sup>11</sup> The evidence was highly favorable and uniformly endorsed Applicant's for a security clearance.

### **Law and Policies**

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>

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<sup>10</sup> Tr. 63–64.

<sup>11</sup> Exhibit B.

<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.

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 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.

## Discussion

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 is:

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

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

<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).

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>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.

Applicant's unfavorable financial history indicates inability or unwillingness to satisfy debts<sup>26</sup> and a history of not meeting financial obligations.<sup>27</sup> The facts are more than sufficient to establish these two disqualifying conditions. In reaching this conclusion, I considered that 16 of the 23 debts in the SOR are medical collection accounts. As such, I gave those debts less weight because they were incurred for necessary medical care and treatment, not consumer goods, luxuries, or frivolous items, and they are not the type of debt that indicates poor self-control, lack of judgment, unwillingness to abide by rules and regulations, misconduct, or irresponsible behavior.

There are six mitigating conditions under Guideline F.<sup>28</sup> Given the evidence here, I have considered the following:

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; and

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debt.

Applicant is a 31-year-old military instructor working for a federal contractor, his common-law wife passed away a few years ago, and he is raising his young son with help from his mother. He does not dispute his adverse financial history, which is largely due to a combination of medical issues, an inconsistent employment history, and a period of unemployment during 2009–2010. The passing of his common-law wife in 2010, leaving him with a young son to raise, no doubt had a negative impact as well.

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omitted).

<sup>25</sup> AG ¶ 18.

<sup>26</sup> AG ¶ 19(a).

<sup>27</sup> AG ¶ 19(c).

<sup>28</sup> AG ¶¶ 20(a)–(f).

Despite those setbacks, Applicant is making progress in addressing the delinquent debts he incurred several years ago. His progress is largely due to his current job, which pays well and is more stable than previous jobs. His progress is not rapid given that he is obliged to provide for his son and his mother who is assisting with child care. He will soon complete his repayment agreement on the judgment, which is probably the most serious matter in the SOR. He also provided credible testimony that he repaid the \$128 collection account stemming from a utility bill. Five collection accounts, for less than \$300 in total, are unknown to him. And he has a reasonable plan to resolve the 16 medical collection accounts, which he will begin after completing his repayment agreement on the judgment.

Of course, a security clearance case is not aimed at collecting debts or enforcing tax laws.<sup>29</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 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 applicant 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 applicant 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 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>30</sup>

Based on the available evidence, I am persuaded that Applicant has a reasonable plan to resolve his delinquent debt and taken significant actions to implement that plan.

After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating the evidence in light of the whole-person concept,<sup>31</sup> I conclude Applicant presented sufficient evidence to explain, extenuate, and mitigate the security concern. In doing so, I gave Applicant credit for his favorable character evidence and his honorable military service in the Army. Accordingly, I conclude he has met his ultimate

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<sup>29</sup> ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

<sup>30</sup> ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotations omitted).

<sup>31</sup> AG ¶ 2(a)(1)–(9).

burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

### **Formal Findings**

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline F: For Applicant

Subparagraphs 1.a–1.w: 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