



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



In the matter of: )  
 )  
 ----- ) ISCR Case No. 11-12981  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Candace Garcia, Esq., Department Counsel  
For Applicant: *Pro se*

06/05/2013

**Decision**

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to revoke her eligibility for a security clearance to work in the defense industry. There is substantial evidence establishing a history of financial problems or difficulties, which is likely to recur or continue. She did not present sufficient evidence to mitigate the financial considerations security concern. Accordingly, this case is decided against Applicant.

**Statement of the Case**

On January 7, 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 April 11, 2013. The hearing took place by video teleconference as scheduled on May 16, 2013. The transcript was received on June 3, 2013.

### Findings of Fact

Applicant denied the allegation in SOR ¶ 1.g. She admitted the remaining allegations under Guideline F, which alleged six delinquent accounts in amounts ranging from \$31 to \$7,988 for a total of \$14,953. Her 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 49-year-old employee of a federal contractor. She has held a security clearance in conjunction with her employment since 2002. She is seeking to retain a security clearance for her job as a head service attendant. To that end, she completed her most recent security clearance application in January 2011.<sup>2</sup>

There is substantial evidence establishing a history of financial problems or difficulties,<sup>3</sup> and these matters are longstanding.<sup>4</sup> Her initial security clearance application from 2001 lists a vehicle repossession that occurred in 1999.<sup>5</sup> Also, she entered into a debt-consolidation program in 2001.<sup>6</sup> It allowed her to agree to a post-judgment settlement of an unpaid judgment of about \$8,500, which she resolved in 2005. More recently, Applicant's financial problems fall into three categories: (1) consumer debt; (2) medical accounts; and (3) student loans. Those matters are alleged in the SOR and are discussed below.

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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.

<sup>3</sup> Exhibits 1–9.

<sup>4</sup> Exhibits 5 and 6.

<sup>5</sup> Exhibit 3.

<sup>6</sup> Exhibit 5.

The \$786 delinquent account in SOR ¶ 1.a is consumer debt and it stems from a credit card account that went into collection and was then charged off for \$1,175.<sup>7</sup> Applicant has been repaying it via a repayment agreement with a law firm that is handling the debt.<sup>8</sup> The account remains unpaid, but the balance owed was \$444 as of March 2013.<sup>9</sup>

Although not alleged in the SOR, Applicant had another consumer debt in collection stemming from an account with a mobile-wireless company. The amount in collection was about \$1,367, and she satisfied the account for less than the full balance in November 2012.<sup>10</sup>

SOR ¶¶ 1.b, 1.c, and 1.e concern three medical collection accounts for \$31, \$487, and \$982, respectively. These accounts are now paid.<sup>11</sup>

There are three delinquent student loan accounts alleged in SOR ¶¶ 1.d, 1.f, and 1.g, respectively. The first loan had a balance of \$4,679 alleged in SOR ¶ 1.d, but the balance was \$6,273 as of January 2013.<sup>12</sup> The account is with a collection agency, and Applicant has been making \$100 monthly payments on the account since February 2013.

The second delinquent student loan had a balance of \$7,988 alleged in SOR ¶ 1.f and when it went into collection, and that amount is confirmed by a 2011 credit report.<sup>13</sup> I cannot determine if it appears on credit reports from 2012 and 2013.<sup>14</sup> After the loan defaulted to the guarantor, Applicant completed a payment agreement as arranged by the guarantor, and the loan was considered rehabilitated.<sup>15</sup> As of January 2013, the balance was \$7,540, she is making monthly payments of \$112 for a scheduled 109 months, and it has a current status.

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<sup>7</sup> Exhibits 7, 8, and 9.

<sup>8</sup> Exhibit F.

<sup>9</sup> Exhibit 9.

<sup>10</sup> Exhibits 2, 8, and 9.

<sup>11</sup> Exhibits C and 9.

<sup>12</sup> Exhibit D.

<sup>13</sup> Exhibit 7.

<sup>14</sup> Exhibits 8 and 9.

<sup>15</sup> Exhibits E, G, H, and I.

The third delinquent student loan had a balance of \$1,614 alleged in SOR ¶ 1.g. Department Counsel conceded the debt is now resolved.<sup>16</sup>

Applicant attributes falling behind on the student loans due to missing work for a couple of weeks due to illness in 2009.<sup>17</sup> At about the same time her daughter became unemployed and required financial support.

### Law and Policies

It is well-established law that no one has a right to a security clearance.<sup>18</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>19</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>20</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>21</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>22</sup> The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>23</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>24</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>25</sup> In *Egan*, the Supreme

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<sup>16</sup> Tr. 63–64.

<sup>17</sup> Exhibit 4.

<sup>18</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>19</sup> 484 U.S. at 531.

<sup>20</sup> Directive, ¶ 3.2.

<sup>21</sup> Directive, ¶ 3.2.

<sup>22</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>23</sup> Directive, Enclosure 3, ¶ E3.1.14.

<sup>24</sup> Directive, Enclosure 3, ¶ E3.1.15.

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

Court stated that the burden of proof is less than a preponderance of the evidence.<sup>26</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>27</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>28</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>29</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>30</sup> The overall concern 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>31</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>26</sup> *Egan*, 484 U.S. at 531.

<sup>27</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

<sup>28</sup> Executive Order 10865, § 7.

<sup>29</sup> AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

<sup>30</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>31</sup> AG ¶ 18.

Applicant's unfavorable financial history indicates inability or unwillingness to satisfy debts<sup>32</sup> and a history of not meeting financial obligations.<sup>33</sup> The facts are more than sufficient to establish these disqualifying conditions. And the same facts support a conclusion of financial irresponsibility.

There are six mitigating conditions under Guideline F.<sup>34</sup> Based on the evidence before me, none of the mitigating conditions are sufficient to fully mitigate the security concern. Applicant has a longstanding history of financial problems or difficulties, and it seems unlikely that history will change any time soon.<sup>35</sup> Although she has made good progress in resolving her current financial problems, she has only recently begun repaying the two largest and most important of the delinquent debts, which are the student loans. In total, she now owes nearly \$14,000 on the student loans. It is simply too soon to tell if she will adhere to her agreements and promises to repay the student loan debts. Given her history, it is just as likely that her financial problems or difficulties will continue or recur.<sup>36</sup>

Of course, a security clearance case is not aimed at collecting debts or enforcing tax laws.<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 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

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<sup>32</sup> AG ¶ 19(a).

<sup>33</sup> AG ¶ 19(c).

<sup>34</sup> AG ¶¶ 20(a)–(f).

<sup>35</sup> There are delinquent debts discussed in the findings of fact that are not alleged in the SOR. I considered these matters for the limited purposes of (1) assessing the full extent of Applicant's adverse financial history, (2) evaluating her evidence of reform and rehabilitation, and (3) under the whole-person concept (e.g., frequency of the conduct).

<sup>36</sup> AG ¶ 2(a)(9) (whole-person factor "the likelihood of continuation or recurrence").

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

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>

This is a relatively close case, but based on the available evidence, I am not persuaded that Applicant has taken enough significant actions to mitigate the security concern under Guideline F.

Applicant's longstanding history of financial problems raises doubt about her judgment, reliability, and trustworthiness. Following *Egan* and the clearly-consistent standard, I resolve the doubt 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 also gave due consideration to the whole-person concept.<sup>39</sup> Having done so, I conclude that 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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For 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>38</sup> ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotations omitted).

<sup>39</sup> AG ¶ 2(a)(1)-(9).