



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



In the matter of: )  
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----- ) ISCR Case No. 11-15118  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel  
For Applicant: *Pro se*

04/11/2014

**Decision**

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny him a security clearance to work in the defense industry. He did not present sufficient evidence to mitigate the financial considerations security concern stemming from a defaulted mortgage loan that is pending foreclosure. Accordingly, this case is decided against Applicant.

**Statement of the Case**

On September 24, 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 answered the SOR on October 14, 2013. Neither Applicant nor Department Counsel requested a hearing, and so, the case will be decided on the written record.<sup>2</sup>

Thereafter, on November 25, 2013, Department Counsel submitted all relevant and material information that could be adduced at a hearing.<sup>3</sup> This so-called file of relevant material (FORM) was mailed to Applicant, who received it December 24, 2013. Then on January 15, 2014, a copy of the Directive was mailed to Applicant, who received it February 5, 2014. Applicant has not replied to the FORM. The case was assigned to me April 9, 2014.

### Findings of Fact

Applicant is a 43-year-old employee who is seeking to obtain a security clearance. His employment history includes working as a security officer for a freight company during 1993–2010. He has also held a part-time job as an armed security officer since 2007. He began his current job as a security officer for a federal contractor in June 2010. He married in 1998, and they had one child.

There is substantial evidence to support the SOR allegation that Applicant has a past-due mortgage loan that is in foreclosure.<sup>4</sup> The relevant facts and circumstances about the mortgage loan are described below.

After marrying, Applicant and his wife obtained a mortgage loan for the purchase of a home in December 1998. The initial mortgage loan with lender #1 was for about \$123,000 and had a monthly payment of \$1,506.<sup>5</sup> The loan was refinanced with lender

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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> Directive, Enclosure 3, ¶ E3.1.7.

<sup>3</sup> The file of relevant material consists of Department Counsel's written brief and supporting documents, some of which may be identified as evidentiary exhibits in this decision.

<sup>4</sup> Exhibits 5–8. I note that the home is located in a state that uses judicial foreclosure (as opposed to non-judicial foreclosure) to handle real estate foreclosure, which can enlarge the time frame necessary to complete the foreclosure process.

<sup>5</sup> Exhibit 5 at 6; Exhibit 8 at 3.

#2 in 2004, with a balance of about \$150,000 and a monthly payment of \$1,667.<sup>6</sup> The loan was past due twice in 2006.<sup>7</sup> It was refinanced again with lender #2 in 2007, with a balance of about \$243,000 and a monthly payment of \$2,356.<sup>8</sup> The loan was refinanced with lender #3 (and its successor in interest) for the last time in 2009, with a balance of about \$278,000 and a monthly payment of \$2,387.<sup>9</sup> Applicant and his wife experienced marital difficulties and they separated in December 2010. Thereafter, neither he nor his wife had the means to pay the mortgage loan. They divorced in July 2011.

A September 2011 credit report shows the mortgage loan had a balance of \$286,835; the account was 180 days past due; and foreclosure proceedings had been initiated.<sup>10</sup> A February 2013 credit report shows that the loan had a balance of \$305,000 with a past-due balance of \$70,000.<sup>11</sup> The most recent credit report from August 2013 shows that the loan had a balance of \$312,000 with a past-due balance of \$84,763.<sup>12</sup> As of March 5, 2013, the payoff amount for the loan was \$337,019, as stated in a letter from a law firm handling the foreclosure for the mortgage lender.<sup>13</sup>

Applicant did not disclose the past-due mortgage loan in his August 2011 security clearance application.<sup>14</sup> During a background investigation in October 2011, he denied that the mortgage loan was in foreclosure and stated the home was for sale to avoid foreclosure.<sup>15</sup> Applicant provided additional information in a March 8, 2013 letter to the DOD as follows:

Estimated original mortgage was \$130,000. Reason why the mortgage fell behind was because of separation. I moved and that lead to a divorce and could not afford to pay the mortgage, rent, and child support all alone. Nothing was done. From my knowledge last payment was December 2010. After December 2010, I no longer lived at the residence and my ex-wife continued living at the property but because of the lack of

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<sup>6</sup> Exhibit 5 at 4; Exhibit 8 at 3.

<sup>7</sup> Exhibit 5 at 4.

<sup>8</sup> Exhibit 5 at 3; Exhibit 8 at 2.

<sup>9</sup> Exhibit 5 at 7; Exhibit 8 at 2.

<sup>10</sup> Exhibit 5 at 7.

<sup>11</sup> Exhibit 6 at 1.

<sup>12</sup> Exhibit 8.

<sup>13</sup> Exhibit 7 at 6–7.

<sup>14</sup> Exhibit 4.

<sup>15</sup> Exhibit 7 at 17.

communication from my ex-wife I did not know anything on the status of the mortgage. According to what my ex-wife has told me, the property is up for sale or under foreclosure whichever comes first. All information on the status of the property only my ex-wife knows. Neither of us were able or are still able to afford the mortgage individually after the separation that lead to a divorce.<sup>16</sup>

In his October 15, 2013 answer to the SOR, Applicant admitted that the mortgage loan was in foreclosure. He repeated his previous explanation (e.g., separation, divorce, and child support). He stated that he called the mortgage lender and was told that the foreclosure was in early stages, and he was trying to obtain information about a short sale.

### Law and Policies

It is well-established law that no one has a right to a security clearance.<sup>17</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>18</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>19</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>20</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>21</sup> The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>22</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate

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<sup>16</sup> Exhibit 7 at 8.

<sup>17</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>18</sup> 484 U.S. at 531.

<sup>19</sup> Directive, ¶ 3.2.

<sup>20</sup> Directive, ¶ 3.2.

<sup>21</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>22</sup> Directive, Enclosure 3, ¶ E3.1.14.

facts that have been admitted or proven.<sup>23</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>24</sup> In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>25</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>26</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>27</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>28</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>29</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

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<sup>23</sup> Directive, Enclosure 3, ¶ E3.1.15.

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

<sup>25</sup> *Egan*, 484 U.S. at 531.

<sup>26</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

<sup>27</sup> Executive Order 10865, § 7.

<sup>28</sup> AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

<sup>29</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>30</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—the past-due mortgage loan that is pending foreclosure—indicates inability or unwillingness to satisfy debts<sup>31</sup> and a history of not meeting financial obligations.<sup>32</sup> The facts are more than sufficient to establish these two disqualifying conditions.

There are six mitigating conditions under Guideline F.<sup>33</sup> I have considered all six in light of the facts and circumstances here, and none, individually or in combination, are sufficient to explain, extenuate, or mitigate the security concern. Applicant, along with his then wife, defaulted on a mortgage loan in 2011, the last payment being made in about December 2010. The available information shows the foreclosure process is ongoing. Although this financial problem appears to be due to Applicant's marital troubles, I cannot conclude that he acted responsibly under the circumstances for two reasons. First, the history of the mortgage loan shows that Applicant and his then wife used or treated their home like a credit card. Starting in 1998 with a modest balance of about \$123,000 and a reasonable monthly payment, they refinanced the mortgage loan multiple times running up the balance to \$278,000 as of 2009; the payoff amount is now more than \$300,000. Second, since leaving the marital home in December 2010, Applicant has been inattentive to his responsibility for the mortgage loan. It is probable that but for the security clearance process, he would still be ignoring the matter. Those are not the actions of a responsible person.

With that said, a security clearance case is not aimed at collecting debts or enforcing tax laws.<sup>34</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

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<sup>30</sup> AG ¶ 18.

<sup>31</sup> AG ¶ 19(a).

<sup>32</sup> AG ¶ 19(c).

<sup>33</sup> AG ¶¶ 20(a)–(f).

<sup>34</sup> ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

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>35</sup>

Based on the available evidence, Applicant has not taken enough significant actions to mitigate the security concern under Guideline F. In light of the facts and circumstances here, the record evidence presents uncertainty, and that uncertainty equates to doubt about Applicant's fitness for access to classified information.

After weighing the relevant disqualifying and mitigating conditions and evaluating the evidence in light of the whole-person concept,<sup>36</sup> I conclude Applicant did not present sufficient evidence to explain, extenuate, and mitigate the security concern. Accordingly, Applicant has not met his ultimate 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:	Against Applicant
Subparagraph 1.a:	Against Applicant

### **Conclusion**

In light of the record as a whole, it is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information.

Michael H. Leonard  
Administrative Judge

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<sup>35</sup> ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotations omitted).

<sup>36</sup> AG ¶ 2(a)(1)–(9).