



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



In the matter of: )  
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----- ) ISCR Case No. 12-01523  
 )  
Applicant for Security Clearance )

**Appearances**

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

03/18/2014

**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. The evidence shows he has more than \$100,000 in delinquent debt that is unresolved and ongoing. He did not present sufficient evidence to mitigate the financial considerations security concern. Accordingly, this case is decided against Applicant.

**Statement of the Case**

On June 12, 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.

The case was assigned to me on September 11, 2013, to conduct a hearing as requested by Applicant. The hearing was scheduled for October 10, 2013, but was postponed due to the shutdown of the federal government. The hearing was rescheduled for a November date, but it was postponed when Applicant suffered a heart attack. The rescheduled hearing was held on March 6, 2014. At the hearing, Department Counsel presented Exhibits 1–5, which were admitted. Likewise, Applicant presented Exhibits A–D, which were admitted, and he testified on his own behalf. The transcript (Tr.) was received March 14, 2014.

### **Findings of Fact**

Applicant is a 45-year-old employee of a federal contractor. He is employed as an armed security guard, a job he has held since 2006. He is seeking to obtain a security clearance for his current job with a security services company.

Applicant has a good record of employment as shown by four highly laudatory letters of recommendation submitted on his behalf. (Exhibits A–D) His employment history includes military service in the U.S. Army during 1987–1989. He has never married and has no children. He has no police record. He completed high school in 1986 and has taken some college courses.

Applicant has more than \$100,000 in delinquent debt due to uninsured medical expenses. He admits the SOR allegations consisting of 19 delinquent accounts in amounts ranging from \$66 to \$97,777 for a total of approximately \$119,000. In addition to his admissions, the delinquent accounts are established by three credit reports. All 19 accounts are from uninsured medical expenses for medical care he received after suffering heart attacks in 2008 and 2011. He suffered a third heart attack in 2013, but those medical expenses are not at issue in the SOR.

Applicant has not paid, settled, entered into repayment agreements, disputed, or otherwise resolved any of the 19 accounts. His intention is to resolve the indebtedness by obtaining relief in bankruptcy court. He stated that intention in December 2011 during his background investigation. He repeated that statement in April 2013 when he answered interrogatories. To date, he has not filed a bankruptcy petition nor retained a bankruptcy attorney to represent him in the matter.

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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.

Applicant's overall financial situation is essentially living month-to-month and paycheck-to-paycheck. His personal financial statement, which reports monthly income and expenses, has a net remainder of \$26. At the hearing, he stated that he had less than \$400 in a checking account; he has no other financial or investment accounts; and he has no other sources of income other than the money he earns for his job.

### Law and Policies

It is well-established law that no one has a right to a security clearance.<sup>2</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>3</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>4</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>5</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>6</sup> The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>7</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>8</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>9</sup> In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>10</sup>

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<sup>2</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>3</sup> 484 U.S. at 531.

<sup>4</sup> Directive, ¶ 3.2.

<sup>5</sup> Directive, ¶ 3.2.

<sup>6</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>7</sup> Directive, Enclosure 3, ¶ E3.1.14.

<sup>8</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>9</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>10</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>11</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>12</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>13</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>14</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>15</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>11</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

<sup>12</sup> Executive Order 10865, § 7.

<sup>13</sup> AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

<sup>14</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>15</sup> AG ¶ 18.

There is substantial evidence that Applicant has a history of financial problems or difficulties. His unfavorable financial history indicates inability or unwillingness to satisfy debts<sup>16</sup> and a history of not meeting financial obligations.<sup>17</sup> The facts are more than sufficient to establish these two disqualifying conditions.

Based on the available evidence, none of the six mitigating conditions under Guideline F are sufficient to fully mitigate the security concern.<sup>18</sup> Applicant has an extremely serious financial problem that is unresolved and ongoing. Although he incurred more than \$100,000 of delinquent debt due to serious medical problems without the benefit of health insurance—a circumstance largely beyond his control—he has not acted responsibly under the circumstances.<sup>19</sup> He has taken no concrete actions to resolve his dire financial predicament. He talked about filing for bankruptcy as far back as 2011, but he has done nothing else. He has not acted with reasonable diligence expected from someone under the circumstances like those at issue. Instead, his response has been inaction or procrastination or both, which are shortcomings that militate against a favorable clearance decision. His statements about intending to file for bankruptcy amount to good intentions, which do not mitigate the security concern.

Of course, a security clearance case is not aimed at collecting debts.<sup>20</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

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<sup>16</sup> AG ¶ 19(a).

<sup>17</sup> AG ¶ 19(c).

<sup>18</sup> AG ¶¶ 20(a)–(f).

<sup>19</sup> AG ¶ 20(b).

<sup>20</sup> ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.<sup>21</sup>

Here, the evidence does not support a conclusion that Applicant has established a plan and taken steps to implement that plan sufficient to mitigate the security concern.

Applicant's history of financial problems raises doubt about his judgment, reliability, and trustworthiness. Following *Egan* and the clearly-consistent standard, I resolve that 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>22</sup> In doing so, I considered Applicant's good employment record, his record of military service, his lack of a police record, the series of heart attacks he suffered during 2008–2013, and the lack of health insurance. This is an unfortunate case, and I have empathy for anyone who has experienced such difficult circumstances. Nonetheless, the evidence established that Applicant has done very little to help himself, and the favorable matters are not enough to justify a conclusion that he 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:	Against Applicant
Subparagraphs 1.a–1.s:	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 a security clearance. Eligibility for access to classified information is denied.

Michael H. Leonard  
Administrative Judge

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

<sup>22</sup> AG ¶ 2(a)(1)–(9).