



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



In the matter of: )  
 )  
 ) ISCR Case No. 15-01053  
 )  
Applicant for Security Clearance )

**Appearances**

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

05/08/2017

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**Decision**

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CERVI, Gregg A., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant completed a Questionnaire for National Security Positions (SF 86) on February 27, 2014. On November 25, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations.<sup>1</sup>

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<sup>1</sup> The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on December 31, 2015, and elected to have the case decided on the written record in lieu of a hearing. The Government's written brief with supporting documents, known as the File of Relevant Material (FORM), was submitted by Department Counsel on May 17, 2016.

A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on May 23, 2016, but he did not submit evidence in mitigation or assert any objections to the Government's evidence. The Government's exhibits included in the FORM (Items 1 to 11) are admitted into evidence. The case was assigned to me on March 21, 2017.

### **Findings of Fact**

The SOR alleges five delinquent debts totaling approximately \$59,764. Applicant admitted all of the allegations in the SOR with explanations. He is 63 years old. He received his bachelor's degree in 1984. He has been employed by a defense contractor since 2008 as an administrative assistant. He has been married since 1973 and has two children.

Applicant incurred student loans for his children which became delinquent. He had previous deferments, and in 2012, a garnishment order required his employer to begin deducting 15% from his pay to apply toward a loan of \$19,290. The order was released in 2014. Applicant claimed in his answer that he was paying on one loan and the remaining loans were deferred.

The last credit report in the record, from January 2015, shows six student loan accounts. The five loans listed in the SOR are in a collection status. One other debt on a retail account listed in the SOR is also in a collection status. In his answer, Applicant claimed he was making monthly payments on the student loan in SOR ¶ 1.a since September 2014, and that the remaining student loans were deferred. He also stated that the retail debt in SOR ¶ 1.f was in the process of being resolved. He provided no documentary evidence in his answer or in response to the FORM to support his claims, and the current status of the student loans and retail debt is unknown.

I was unable to further inquire into specifics related to the debts, his current financial status, and the likelihood of future financial difficulties since he elected to have his case decided without a hearing. There is no documentary evidence of financial counseling or assistance with budgeting or debt relief. In his personal subject interview (PSI), he noted that he lives paycheck-to-paycheck, and incurred some financial hardships when his furnace had to be replaced unexpectedly, and a rental home had to be completely refurbished after a tenant was evicted.

## Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security clearance decision.<sup>2</sup> In *Department of Navy v. Egan*<sup>3</sup>, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>4</sup>

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." It is well-established law that no one has a right to a security clearance. As noted by the Supreme Court in *Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." 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.<sup>5</sup>

The Government reposes a high degree of trust and confidence in individuals to whom it grants access to sensitive and classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or

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<sup>2</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan.27, 1995).

<sup>3</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>4</sup> *Egan*, 484 U.S. at 531.

<sup>5</sup> *Egan*, 484 U.S. at 531.

inadvertently fail to safeguard sensitive or classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive or classified information.

Section 7 of Exec. Or. 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## Analysis

### Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

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. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has a history of financial delinquencies and unresolved delinquent debts. The evidence is sufficient to raise the above disqualifying conditions.<sup>6</sup>

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

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<sup>6</sup> The Appeal Board concisely explained Applicant’s responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant’s security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.” Directive, Enclosure 2 ¶ 2(b).

(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;

(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;

(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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(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 documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

It is unclear why Applicant became delinquent on his debts or why he has not shown efforts to resolve the debts as he claimed in his answer. I am unable to determine the current status of the debts or his current financial status to determine whether he has an ongoing problem with financial responsibility. He has not shown documentary evidence that he acted responsibly or in good faith to resolve his financial obligations, despite a history of steady employment since 2008. There was no documentary evidence presented showing Applicant received financial counseling or the current state of his finances.

Based on the paucity of mitigating evidence contained in the record, I find that the SOR debts have not been sufficiently addressed to warrant application of any of the mitigating conditions. The totality of the unresolved delinquent debts and lack of evidence of current financial responsibility leave me with doubts about Applicant's overall financial condition and ability or willingness to face his financial responsibilities. They continue to cast doubt on his current reliability, trustworthiness, and good judgment.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I considered all of the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guideline F in this whole-person analysis.

There is insufficient evidence to show resolution of the SOR debts or his current financial status, despite Applicant's assertions in the answer. I am unable to make a favorable determination without a showing by the Applicant that he has made a substantial effort toward resolution of the debts. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a – 1.f:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

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Gregg A. Cervi  
Administrative Judge