



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



In the matter of: )  
 )  
----- ) ISCR Case No. 15-01698  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Bryan Olmos, Esq., Department Counsel  
For Applicant: *Pro se*

08/10/2016  
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**Decision**  
\_\_\_\_\_

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to deny him eligibility for access to classified information. He did not present sufficient evidence to demonstrate that he has made a reasonable effort to resolve his financial problems. Accordingly, this case is decided against Applicant.

**Statement of the Case**

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86 Format) on March 3, 2014.<sup>1</sup> Thereafter on October 13, 2015, after reviewing the application and information gathered during a background investigation,

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<sup>1</sup> Exhibit 1 (commonly known as a security clearance application).

the Department of Defense (DOD)<sup>2</sup> sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant him eligibility for access to classified information.<sup>3</sup> The SOR is similar to a complaint. It detailed the reasons for the action under the security guideline known as Guideline F for financial considerations. He answered the SOR on November 5, 2015, and requested a hearing.

The case was assigned to me on February 22, 2016. The hearing was held as scheduled on April 13, 2016. Department Counsel offered Exhibits 1–4, and they were admitted. Applicant testified on his own behalf and offered Exhibits A–C, and they were admitted. The record was kept open to allow Applicant to submit additional documentation. He made a timely submission on April 15, 2016, and those matters are admitted as Exhibits D and E. The transcript of the hearing (Tr.) was received on April 21, 2016.

### **Findings of Fact**

Applicant is a 31-year-old employee who is seeking to obtain a security clearance. His education includes a high school diploma and some college. His background includes honorable military service in the U.S. Army during 2004–2011. During that time, he deployed three times to Iraq.<sup>4</sup> The Department of Veterans Affairs has given him a 50% rating for his service-connected disabilities.<sup>5</sup> He described the factual basis for his disabilities, which includes PTSD.<sup>6</sup> He is employed as a computer operator for a company doing business in the defense industry. His work involves the operation of a firing range on a large military installation.<sup>7</sup> He has worked for his current employer since February 2014.

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<sup>2</sup> The SOR was issued by the DOD Consolidated Adjudications Facility, Fort Meade, Maryland. It is a separate and distinct organization from the Defense Office of Hearings and Appeals, which is part of the Defense Legal Services Agency, with headquarters in Arlington, Virginia.

<sup>3</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).

<sup>4</sup> Exhibit D.

<sup>5</sup> Exhibit E.

<sup>6</sup> Tr. 34.

<sup>7</sup> Tr. 32–33.

Applicant has a history of financial problems or difficulties, which he does not dispute. Under Guideline F, the SOR alleges several matters that are summarized as follows: (1) an unpaid \$742 state tax lien filed in 2013; (2) five collection or charged-off accounts for a total of about \$14,061; and (3) a \$2,000 collection account for an unpaid student loan.

The SOR allegations are established by Department Counsel's documentary evidence as well as Applicant's admissions in his answer to the SOR.<sup>8</sup> Applicant addressed each of the seven delinquent debts in his hearing testimony, explaining that they are unresolved.<sup>9</sup> He made some progress by establishing a payment plan for the \$466 collection account in SOR ¶ 1.f, but he had not yet made the initial payment.<sup>10</sup>

In addition to the matters in the SOR, Applicant presented documentation showing that in April 2016 he entered into a rehabilitation program for student loans not alleged in the SOR.<sup>11</sup> The documentation shows his monthly income as \$2,797 and monthly expenses as \$2,542. That is generally consistent with his hearing testimony in which he said he earns \$2,400 monthly from his job and has no money left over at the end of the month.<sup>12</sup> His most recent large purchase was a used pickup truck that he bought in August 2014 for \$20,000, which carries a monthly loan payment of \$472.<sup>13</sup>

### **Law and Policies**

It is well-established law that no one has a right to a security clearance.<sup>14</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>15</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.

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<sup>8</sup> Exhibits 1–4.

<sup>9</sup> Tr. 36–46.

<sup>10</sup> Tr. 43–44.

<sup>11</sup> Exhibit A.

<sup>12</sup> Tr. 33, 59.

<sup>13</sup> Tr. 57–59.

<sup>14</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>15</sup> 484 U.S. at 531.

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>16</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>17</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>18</sup> The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>19</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>20</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>21</sup>

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>22</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>23</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>24</sup> Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

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<sup>16</sup> Directive, ¶ 3.2.

<sup>17</sup> Directive, ¶ 3.2.

<sup>18</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>19</sup> Directive, Enclosure 3, ¶ E3.1.14.

<sup>20</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>21</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>22</sup> *Egan*, 484 U.S. at 531.

<sup>23</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

<sup>24</sup> Executive Order 10865, § 7.

## Discussion

Under Guideline F for financial considerations,<sup>25</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>26</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>27</sup>

The concern is broader than the possibility that a person might knowingly compromise classified information to obtain money or something else of value. It encompasses concerns about a person's self-control, judgment, and other important qualities. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

The evidence supports a conclusion that Applicant has a history of financial problems or difficulties as well as an inability or unwillingness to satisfy debts.<sup>28</sup> That conclusion is supported by the documentary evidence and Applicant's admissions that establish an unpaid state tax lien, five unpaid collection accounts, and an unpaid collection account for a student loan for a total of about \$17,000. Although that is not a large amount of delinquent debt, it is large in comparison to his annual income of about \$34,000. Applicant's problematic financial history raises a security concern under Guideline F.

I considered the six mitigating conditions under Guideline F,<sup>29</sup> and none, individually or taken together, are sufficient to explain and mitigate the security concern. To start, Applicant's financial problems are largely ongoing and unresolved. Moreover, he did not present sufficient documentary evidence to demonstrate that he has made a reasonable effort to resolve his problematic financial history. The seven delinquent debts in the SOR are unresolved with only one of those debts at the beginning of a

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<sup>25</sup> AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

<sup>26</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>27</sup> AG ¶ 18.

<sup>28</sup> AG ¶¶ 19(a) and (c).

<sup>29</sup> AG ¶ 20(a)–(f).

repayment arrangement. Although I am persuaded that Applicant is sincere in his desire to repay his delinquent debts, at this point it is simply too soon to tell if he will do so in the foreseeable future.

Applicant's problematic financial history creates doubt about his current reliability, trustworthiness, good judgment, and ability to protect classified information. 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>30</sup> In that regard, I gave special consideration to his honorable military service, which includes three deployments to Iraq. Accordingly, I conclude that he did not meet 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
Subparagraphs 1.a–1.g:	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>30</sup> AG ¶ 2(a)(1)–(9).