



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



In the matter of: )  
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----- ) ISCR Case No. 15-02174  
 )  
Applicant for Security Clearance )

**Appearances**

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

07/29/2016  
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**Decision**  
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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 documentary evidence to demonstrate that he has made a reasonable effort to resolve his problematic financial history, which includes a \$44,677 judgment for past-due child support and more than \$80,000 in back taxes owed to the IRS. 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 October 23, 2012.<sup>1</sup> About three years later on October 5, 2015, after reviewing the application and information gathered during a background

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

investigation, 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 10, 2015, and requested a hearing.

The case was assigned to me on February 22, 2016. The hearing was held as scheduled on April 12, 2016. Department Counsel offered Exhibits 1–15, and they were admitted. Applicant testified on his own behalf and offered Exhibits A–D, and they were admitted. The transcript of the hearing (Tr.) was received on April 21, 2016.

### **Findings of Fact**

Applicant is a 60-year-old employee who is seeking to obtain a security clearance. His education includes a high school diploma and some college. He has been married and divorced twice. He has three adult children, a son from his first marriage and two daughters from his second marriage. His background includes honorable military service in the inactive reserve during 1976–1979. He is currently engaged to be married.

Applicant is employed as a network technician for a company doing business in the defense industry. He has worked for his current employer since 2012. Before that, he was self-employed during 2000–2012 as the owner of a business that installed voice, data, and video networks. During that period, he was out of work for about two years.<sup>4</sup>

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 \$44,677 judgment for past-due child support obtained by a state child-support-enforcement agency in 2009; (2) more than \$80,000 in back taxes owed to the IRS along with a number of outstanding federal tax liens; (3) failure to file federal income tax returns for tax years 2009 and 2010; (4) an unpaid state tax lien for \$6,877; (5) an unpaid \$6,584 judgment obtained by a state; and (6) an unpaid \$2,484 tax assessment filed by a state agency.

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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> Tr. 45.

The SOR allegations are established by Department Counsel's documentary evidence.<sup>5</sup> In addition, Applicant's answer to the SOR was mixed with admissions, denials, and explanations. A reading of his answer shows, however, that Applicant does not dispute the underlying debts or obligations, but he does disagree with the status of several matters.

Applicant attributes his financial problems to his second divorce, and the resulting fallout, and his period of self-employment during 2000–2012, in which he described himself as “a very good network installer, and very poor businessman.”<sup>6</sup> He further described himself as a poor businessman who procrastinated and did not file paperwork on time.<sup>7</sup> His second divorce was a difficult and emotional event for him, and he made some unsound financial decisions to protect his then minor daughters. The details about six matters summarized above are discussed below.

**SOR ¶ 1.a–unpaid \$44,677 judgment for past-due child support.** Applicant was ordered to pay child support for his two minor daughters, and this judgment was entered against him in 2009.<sup>8</sup> He fell behind on his child-support payments because he failed to make the required payments through the proper method. Instead, he typically made cash payments directly to his ex-wife.<sup>9</sup> He was making cash payments since it was more expedient at the time because he was living “hand to mouth” on a tight budget.<sup>10</sup>

As a result, the state child-support-enforcement agency did not credit Applicant for those cash payments. Eventually, Applicant was sued for nonpayment of child support and the matter was resolved with the entry of judgment in 2009. He estimated that he paid \$40,000 to \$50,000 in cash to his ex-wife for which did not receive credit as child-support payments.<sup>11</sup> He stated that the judgment is paid by payroll deduction, and he estimated the current balance at about \$38,000.<sup>12</sup> He did not present an account statement, proof of payment, or other relevant documentation.

**SOR ¶¶ 1.c–1.h–more than \$80,000 in back taxes owed to the IRS and outstanding federal tax liens.** Applicant's tax problems with the IRS stem from the

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<sup>5</sup> Exhibits 1–15.

<sup>6</sup> Tr. 28–29.

<sup>7</sup> Tr. 34.

<sup>8</sup> Exhibit 6.

<sup>9</sup> Tr. 29–30.

<sup>10</sup> Tr. 44–45.

<sup>11</sup> Tr. 31.

<sup>12</sup> Tr. 31–32.

period when he was running his business. The crux of the dispute was about whether people who worked for Applicant's business were employees or independent contractors.<sup>13</sup> Applicant's second divorce also played a part in the tax problem as there was a dispute about claiming minor children as dependents.<sup>14</sup> The IRS filed six tax liens against Applicant as follows: (1) a tax lien for \$6,877 filed in 2008 for tax periods in 2007; (2) a tax lien for \$3,853 filed in 2008 for a tax period in 2008; (3) a tax lien for \$7,597 filed in 2009 for tax periods in 2008; (4) a tax lien for \$4,714 filed in 2009 for a tax period in 2008; (5) a tax lien for \$52,934 filed in 2012 for tax periods in 2005, 2007, 2008, and 2011; and (6) a tax lien for \$7,361 filed in 2013 for a tax period in 2009.<sup>15</sup>

The tax liens are outstanding. Applicant explained that the IRS determined that he was unable to pay this indebtedness and closed his case as currently not collectible.<sup>16</sup> Nevertheless, the IRS has intercepted his tax refunds since 2012.<sup>17</sup> He did not know the current balance owed to the IRS.<sup>18</sup> Nor did he present an IRS tax account transcript, a letter of confirmation from the IRS showing his tax liability is in uncollectible status, or other relevant documentation.

**SOR ¶¶ 1.k and 1.l—failure to timely file federal income tax returns for 2009 and 2010.** Applicant admits he failed to file returns for these two tax years when he was going through the various tax issues. In 2012, he obtained the services of a tax preparation firm and filed the delinquent returns and paid the penalties.<sup>19</sup> He continues to use the service of the same firm and has filed timely returns since.

**SOR ¶ 1.b—unpaid state tax lien for \$1,145.** This lien was placed against Applicant in May 2008 with February 2008 as the period of liability.<sup>20</sup> It is related to his then business as the lien states it is for limited sales, excise, and use tax. He disputed

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<sup>13</sup> Tr. 35–36.

<sup>14</sup> Tr. 36–37.

<sup>15</sup> Exhibits 8–13.

<sup>16</sup> Tr. 37–38. As far as I understand IRS practice and procedure, a taxpayer's options to resolve an unpaid tax liability include agreeing with the IRS to make monthly installment payments, reaching a settlement with an offer in compromise, or having the IRS place the account in currently not collectible status. Currently not collectible status occurs when the IRS agrees that the taxpayer cannot afford to repay the debt and doing so would create an economic hardship. It is a form of forbearance, in which the IRS decides to refrain from enforcing the tax liability. When doing so, the IRS sends a letter of confirmation (known as IRS Letter 4223) informing the taxpayer that the tax liability is uncollectible and the case is closed. An uncollectible determination does not prevent the IRS from reopening the case in the future.

<sup>17</sup> Exhibits B, C, and D.

<sup>18</sup> Tr. 38.

<sup>19</sup> Tr. 49–50.

<sup>20</sup> Exhibit 7.

this lien in his answer to the SOR and said he was working with the state to resolve it. At the hearing, he did not present any relevant documentation on this debt.<sup>21</sup>

**SOR ¶ 1.i–unpaid \$6,584 judgment obtained by a state.** This judgment was obtained by a state and other governmental parties in 2009.<sup>22</sup> Applicant admitted the debt in his answer to the SOR and said he was working with the state to resolve the matter. At the hearing, he did not present documentation showing the judgment was paid, satisfied, released, cancelled, or otherwise resolved.<sup>23</sup>

**SOR ¶ 1.j–unpaid \$2,484 tax assessment by a state agency.** This assessment was made in 2009 and it is related to the operation of Applicant’s business.<sup>24</sup> Applicant admitted the debt in his answer to the SOR and said he was working with the state to resolve the matter. At the hearing, he did not present documentation showing the assessment was paid, satisfied, released, cancelled, or otherwise resolved.<sup>25</sup>

Applicant described his current financial situation as stable.<sup>26</sup> He estimated his gross income for 2015 at \$58,000 to \$64,000; he estimated having a monthly net remainder of \$600 to \$700; he has two checking accounts with a combined balance of about \$1,400 to \$1,500; and he has less than \$10,000 in a 401(k) account.<sup>27</sup> Going forward, his plan is to improve his financial situation to the point where he can reach an agreement with the IRS to make monthly installment payments and continue paying the child-support judgment by payroll deduction.<sup>28</sup>

## Law and Policies

It is well-established law that no one has a right to a security clearance.<sup>29</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

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<sup>21</sup> Tr. 33–34.

<sup>22</sup> Exhibit 14.

<sup>23</sup> Tr. 33–34.

<sup>24</sup> Exhibit 15.

<sup>25</sup> Tr. 33–34.

<sup>26</sup> Tr. 41.

<sup>27</sup> Tr. 51–53.

<sup>28</sup> Tr. 54–55.

<sup>29</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).

side of denials.”<sup>30</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>31</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>32</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>33</sup> The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>34</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>35</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>36</sup>

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>37</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>38</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

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<sup>30</sup> 484 U.S. at 531.

<sup>31</sup> Directive, ¶ 3.2.

<sup>32</sup> Directive, ¶ 3.2.

<sup>33</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>34</sup> Directive, Enclosure 3, ¶ E3.1.14.

<sup>35</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>36</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>37</sup> *Egan*, 484 U.S. at 531.

<sup>38</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

person a security clearance is not a determination of an applicant's loyalty.<sup>39</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>40</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>41</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>42</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 inability or unwillingness to satisfy debts.<sup>43</sup> That conclusion is supported by the documentary evidence and Applicant's admissions that establish a \$44,677 judgment for past-due child support, more than \$80,000 in back taxes owed to the IRS and related federal tax liens, and three miscellaneous matters for a total of about \$10,000 owed to a state. Those are large sums of money. Further, I consider the judgment for past-due child support and the back taxes owed to the IRS as high-priority debts given the nature of the obligations. At bottom, Applicant's problematic financial history raises a serious security concern under Guideline F.

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<sup>39</sup> Executive Order 10865, § 7.

<sup>40</sup> AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

<sup>41</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>42</sup> AG ¶ 18.

<sup>43</sup> AG ¶¶ 19(a) and (c).

I considered the six mitigating conditions under Guideline F,<sup>44</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. Second, although his second divorce and the fall out therefrom were circumstances largely beyond his control, those circumstances are too far in the past for Applicant to receive the full benefit of that mitigating circumstance. Third, he admits he brought much of these problems on himself by the manner in which he paid child support and by being an inattentive if not careless businessman. Fourth, although his financial problems are longstanding, he presented very little documentation to support his stated interactions with state and federal agencies. One would think that when dealing with issues like those in the SOR, a person would have a large amount of paperwork to show their actions, progress, and agreements. Here, the lack of such paperwork is telling. Considering the totality of facts and circumstances, Applicant did not present sufficient documentary evidence to demonstrate that he has made a reasonable effort to resolve his problematic financial history or that 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>45</sup> 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.j:	Against Applicant
Subparagraphs 1.k and 1.l:	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 access to classified information.

Michael H. Leonard  
Administrative Judge

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<sup>44</sup> AG ¶ 20(a)–(f).

<sup>45</sup> AG ¶ 2(a)(1)–(9).