



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



In the matter of: )  
 )  
----- ) ISCR Case No. 15-02329  
 )  
Applicant for Security Clearance )

**Appearances**

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

08/15/2016  
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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 evidence to demonstrate that he has made a reasonable effort to resolve two outstanding state tax liens for a total of about \$38,000. 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 November 15, 2012.<sup>1</sup> About three years later on December 3, 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 factual reasons for the action under the security guideline known as Guideline F for financial considerations. He answered the SOR on January 4, 2016, and requested a decision based on the written record in lieu of a hearing. Thereafter, Department Counsel made a timely request for a hearing on February 8, 2016.<sup>4</sup>

The case was assigned to me on March 29, 2016. The hearing was held as scheduled on April 12, 2016, with Applicant waiving the 15-day notice requirement.<sup>5</sup> Department Counsel offered Exhibits 1–7, and they were admitted. Applicant testified on his own behalf, presented three character witnesses, and offered Exhibits A–L, and they were admitted.

The record was kept open for 30 days until May 12, 2016, to allow Applicant to submit additional information concerning the two state tax liens. He made a timely submission, by e-mail, on May 11, indicating that he had been unsuccessful in obtaining additional information on the tax liens. His e-mail is made part of the record as Exhibit M. The transcript of the hearing (Tr.) was received on June 1, 2016.

### **Ruling on Procedure**

At the hearing, SOR ¶ 1.a was amended to conform to the evidence by identifying the correct jurisdiction that issued the state tax lien.<sup>6</sup> To address any undue surprise and potential unfairness due to lack of notice, Applicant was given 30 days after the hearing to provide additional evidence concerning the state tax liens alleged in SOR ¶¶ 1.a and 1.b.

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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> Appellate Exhibit I.

<sup>5</sup> Tr. 7–9.

<sup>6</sup> Tr. 21, 36–43.

## Findings of Fact

Applicant is a 63-year-old employee who is seeking to obtain a security clearance. His background includes honorable military service in the U.S. Air Force during 1973–1981. He worked for a major telecommunications company from 1984 to 2008, when he retired, although he returned to the workforce in 2010. He is currently employed as a project manager for a company doing business in the defense industry. His work involves providing training to mobilizing and deploying servicemembers.<sup>7</sup> He has worked in this capacity since 2010, and he has worked for his current employer since 2012. According to the three character witnesses and relevant documentation, Applicant has a good employment record for his current job.

Applicant divorced his first wife in July 2008, and married his current wife the following month. Those events took place shortly before he retired from the telecommunications company. He then moved from State A to State B where he bought a house for cash. They remained in State B for a couple of years until he relocated to his current work location in State C.

Applicant incurred substantial federal and state tax debts when he made a series of withdrawals from a 401(k) account. He explained that he essentially “wiped out” \$475,000 in the account by buying the house in State B and attempting to save a house in State A from foreclosure.<sup>8</sup> He made withdrawals from the 401(k) account without a full understanding the tax consequences, as he mistakenly believed the withdrawals were tax-free.

In 2008 and 2009, the IRS filed federal tax liens against him for tax years 2006, 2007, and 2008, for a total of about \$87,000.<sup>9</sup> In September 2011, Applicant sold his house in State B and used the sales proceeds to pay his indebtedness to the IRS.<sup>10</sup> The federal tax liens were released in November 2011.<sup>11</sup>

In addition to the federal tax liens, there are two unresolved state tax liens, which are alleged in SOR ¶¶ 1.a and 1.b. State A filed a tax lien against Applicant in April 2009 for \$25,470. State B filed a tax lien against Applicant in February 2010 for \$12,582. Applicant denied the tax liens in his answer to the SOR. The liens are

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<sup>7</sup> Exhibits C, I, J, K, and L.

<sup>8</sup> Tr. 74–75.

<sup>9</sup> Exhibits E, F, G, and H. The federal tax liens are not alleged in the SOR and are not considered for disqualification purposes. I have considered those matters for the limited purposes of understanding the sequence of events of Applicant’s financial problems and the steps he took to resolve them.

<sup>10</sup> Exhibits A and B.

<sup>11</sup> Exhibits E, F, G, and H.

established by a 2012 credit report, a 2015 credit report, and records of lien filings.<sup>12</sup> Applicant was at a loss to explain the two state tax liens as he believed they were resolved when he sold the house in State B. Post-hearing, he was unable to provide additional information about the two liens.<sup>13</sup>

SOR ¶¶ 1.c–1.j alleges eight collection accounts, most for small amounts, for a total of about \$2,500. Applicant denied the accounts in his answer to the SOR except for the \$141 collection account in SOR ¶ 1.h, which he said he was in the process of settling. The eight accounts are listed in the 2012 credit report, but they do not appear in the more recent credit reports from 2015 and 2016.<sup>14</sup> In fact, there are no collection accounts listed in the 2015 and 2016 credit reports.

### **Law and Policies**

It is well-established law that no one has a right to a security clearance.<sup>15</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>16</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>17</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>18</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>19</sup> The Government has the burden of presenting

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<sup>12</sup> Exhibits 3, 4, 6, and 7.

<sup>13</sup> Exhibit M.

<sup>14</sup> Exhibits 3, 4, and 5.

<sup>15</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>16</sup> 484 U.S. at 531.

<sup>17</sup> Directive, ¶ 3.2.

<sup>18</sup> Directive, ¶ 3.2.

<sup>19</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

evidence to establish facts alleged in the SOR that have been controverted.<sup>20</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>21</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>22</sup>

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>23</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>24</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>25</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>26</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>27</sup> The overall concern is:

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<sup>20</sup> Directive, Enclosure 3, ¶ E3.1.14.

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

<sup>22</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>23</sup> *Egan*, 484 U.S. at 531.

<sup>24</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

<sup>25</sup> Executive Order 10865, § 7.

<sup>26</sup> AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

<sup>27</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).

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>28</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>29</sup> That conclusion is supported by the documentary evidence that establishes two unresolved state tax liens for a total of about \$38,000. With that said, I have no concerns about the eight collection accounts for about \$2,500. Most of the accounts are for minor amounts, and none of the accounts appear in the more recent credit reports from 2015 and 2016.

I considered the six mitigating conditions under Guideline F,<sup>30</sup> and none, individually or taken together, are sufficient to explain and mitigate the security concern stemming from the unresolved state tax liens. Applicant did not present sufficient evidence to show that the two liens were paid, satisfied, released, or otherwise resolved. Although Applicant believes the liens should have been resolved when he sold the house in State B in 2011, I cannot reach that conclusion without supporting documentation and there is none. Unresolved tax debts raise a serious security concern because a failure to meet one's tax obligations reflects poorly on an applicant's judgment, reliability, and trustworthiness. Here, I cannot conclude that the concern is adequately explained and mitigated based on the facts before me.

Applicant's unresolved state tax liens create 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>31</sup> In that regard, I gave special consideration to his honorable military service and his good employment record. 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.

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<sup>28</sup> AG ¶ 18.

<sup>29</sup> AG ¶¶ 19(a) and (c).

<sup>30</sup> AG ¶ 20(a)–(f).

<sup>31</sup> AG ¶ 2(a)(1)–(9).

### **Formal Findings**

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a–1.b:	Against Applicant
Subparagraphs 1.c–1.j:	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