



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 15-02727

**Appearances**

For Government: Adrienne Driskill, Esq., Department Counsel

For Applicant: Bruce R. Heurlin, Esq.

02/07/2017

**Decision**

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to revoke his eligibility for access to classified information. He presented sufficient evidence to explain, extenuate, and mitigate the security concern stemming from his problematic financial history. Accordingly, this case is decided for Applicant.

**Statement of the Case**

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86 format) on July 30, 2012. This document is commonly known as a security clearance application. Thereafter, on December 14, 2015, after reviewing the application and the information gathered during a background investigation, the Department of Defense Consolidated Adjudications Facility, Fort Meade, Maryland, 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>1</sup> The SOR is similar to a complaint. It detailed the factual reasons for the

<sup>1</sup> This action was taken under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended, as well as Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG),

action under the security guideline known as Guideline F for financial considerations. He answered the SOR on January 27, 2016; he admitted the nine delinquent debts alleged in the SOR; he provided brief explanations; and he requested a hearing.

The case was assigned to another administrative judge on May 3, 2016, and then reassigned to me on June 17, 2016. The hearing was held as scheduled on September 8, 2016. Department Counsel offered Exhibits 1-5, and they were admitted. Applicant testified on his own behalf and offered Exhibits A-W, and they were admitted. The record was kept open to allow Applicant to present additional matters concerning a particular debt, and that matter is admitted as Exhibit X without objections. The transcript of hearing (Tr.) was received on September 16, 2016.

### **Findings of Fact**

Applicant is a 61-year-old employee who requires a security clearance for his job as a server administrator with a company doing business in the defense industry. He has worked for this company since 2008. He has held a security clearance for many years while serving in the military as well as while working in the defense industry. He has a good if not excellent record of employment.<sup>2</sup> His employment history includes honorable service in the U.S. military from 1977 to 1997, when he retired as a senior noncommissioned officer (pay grade E-7). His current annual salary is about \$66,000, and he receives military retired pay of about \$17,000 annually.

Applicant's educational background is extensive.<sup>3</sup> It includes an associate's degree in applied science awarded in 1992. After retiring from military service, he decided to pursue a new career in information technology. He earned an associate's degree in information technology and computer network systems in 2003. He also earned a bachelor's degree in information systems security in 2005. In earning his bachelor's degree, he was recognized with membership in a prestigious national honor society.

Under Guideline F for financial considerations, the SOR alleged a history of financial problems or difficulties consisting of nine collection or charged-off accounts for a total of about \$46,882. Applicant does not dispute his problematic financial history. He disclosed about \$45,000 in delinquent credit card accounts in his July 2012 security clearance application.<sup>4</sup> He provided additional information about his financial situation during a 2012 background investigation.<sup>5</sup> To summarize, he has resolved or is the

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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>2</sup> Exhibits F, G, H, I, J, K, L, M, T, U, V, W.

<sup>3</sup> Exhibits A, B, C, and D.

<sup>4</sup> Exhibit 1 (Section 26 – Financial Record).

<sup>5</sup> Exhibit 2.

process of resolving six of the delinquent debts and three debts are enrolled in a debt-repayment program and yet to be resolved. The status of each of the nine delinquent accounts is discussed below.

SOR ¶ 1.a--\$8,200 collection account. This account is enrolled in the debt-repayment program in the amount of \$8,200 and is yet to be resolved.<sup>6</sup>

SOR ¶ 1.b--\$7,385 charged-off account. This account is enrolled in the debt-repayment program in the amount of \$8,123 and is yet to be resolved.<sup>7</sup>

SOR ¶ 1.c--\$3,199 charged-off account. This account was settled for \$1,690 via the debt-repayment program.<sup>8</sup>

SOR ¶ 1.d--\$1,034 collection account. This account was settled for \$414 via the debt-repayment program.<sup>9</sup>

SOR ¶ 1.e--\$3,995 unpaid judgment entered in 2011. This debt was paid in full in February 2016, and the satisfaction and release of judgment was filed in April 2016.<sup>10</sup>

SOR ¶ 1.f--\$7,600 unpaid judgment entered in 2011. This debt was paid in full in February 2016, and the satisfaction and release of judgment was filed in April 2016.<sup>11</sup>

SOR ¶ 1.g--\$5,073 collection account. This account is enrolled in the debt-repayment program in the amount of \$5,581 and it is yet to be resolved.

SOR ¶ 1.h--\$2,094 collection account. There was some uncertainty about this account during the hearing. After the hearing, Applicant determined that the account was not enrolled in the debt-repayment program; it had reverted back to the original creditor who elected to cancel the debt in the amount of \$2,228 for tax year 2014 and issued an IRS Form 1099-C to that effect; he did not receive the Form 1099-C because it was mailed to an incorrect address; he has now obtained a copy of the Form 1099-C; and he will report the 1099-C as income on his tax returns for 2016.<sup>12</sup>

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<sup>6</sup> Exhibit N; Tr. 45.

<sup>7</sup> Exhibit N; Tr. 45.

<sup>8</sup> Exhibit N; Tr. 45.

<sup>9</sup> Exhibits N; Tr. 46.

<sup>10</sup> Exhibit O; Tr. 47.

<sup>11</sup> Exhibit P; Tr. 47.

<sup>12</sup> Exhibit X.

SOR ¶ 1.i--\$8,302 collection account. This account was reduced to a judgment, and the satisfaction and release of judgment was filed in June 2014.<sup>13</sup>

Applicant attributes his problematic financial history to unemployment after his retirement from the military. He was unemployed from June to September 2001; he was underemployed with a part-time job in a work-study program from November 2001 to April 2004 while he was a student; he was unemployed from July 2006 to September 2006; and he was unemployed for about a year from February 2007 to February 2008.<sup>14</sup> He attributes the most recent period of unemployment as the primary circumstance that resulted in his financial problems.<sup>15</sup> During that period of unemployment, he and his spouse relied on credit cards to pay for living expenses.<sup>16</sup> He was underemployed in a minimum-wage job from February 2008 to September 2008, when he began his current job in the defense industry.<sup>17</sup> His spouse lost her job working at a large grocery store in about 2008, and she has not worked since.<sup>18</sup>

Applicant retained the services of a law firm in about September 2009 to assist him with a debt-consolidation program.<sup>19</sup> They advised him to stop paying all credit card accounts, allow the accounts to go into default, and address the accounts when he was sued for collection. They did not inquire whether Applicant had a security clearance. He paid the law firm about \$10,000 over the course of a year until about September 2010, the law firm settled one or two accounts, but otherwise did assist him when he was sued.

The law firm referred Applicant to a local bankruptcy attorney for assistance with the judgments.<sup>20</sup> Applicant had some initial communication with the bankruptcy attorney who was successful in delaying payment of the judgments, but communication thereafter ceased. He did not pursue relief via bankruptcy because he wanted to repay his indebtedness.

In February 2016, Applicant retained the services of a debt-repayment program.<sup>21</sup> As noted above, Applicant enrolled five delinquent credit card accounts for a

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<sup>13</sup> Exhibit Q; Tr. 47-48.

<sup>14</sup> Exhibit 1 (Section 13A – Employment Activities).

<sup>15</sup> Tr. 77.

<sup>16</sup> Tr. 32-33.

<sup>17</sup> Tr. 34.

<sup>18</sup> Tr. 34-35.

<sup>19</sup> Tr. 37-41, 85.

<sup>20</sup> Tr. 41-43.

<sup>21</sup> Exhibit N; Tr. 44-48.

total of \$26,603 to be resolved over a 40-month period.<sup>22</sup> Two of the five accounts have been resolved to date for a total of \$4,789 in resolved debt and three accounts are active and yet to be resolved.

Applicant made a favorable impression on me during the hearing. He was serious, contrite, and respectful of the process. Overall, I found him credible.

### **Law and Policies**

It is well-established law that no one has a right to a security clearance.<sup>23</sup> As noted by the Supreme Court in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>24</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>25</sup> An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.<sup>26</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>27</sup> The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>28</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>29</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>30</sup>

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<sup>22</sup> Tr. 70.

<sup>23</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 (no right to a security clearance).

<sup>24</sup> 484 U.S. at 531.

<sup>25</sup> Directive, ¶ 3.2.

<sup>26</sup> Directive, ¶ 3.2.

<sup>27</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>28</sup> Directive, Enclosure 3, ¶ E3.1.14.

<sup>29</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>30</sup> Directive, Enclosure 3, ¶ E3.1.15.

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.<sup>31</sup> The Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.<sup>32</sup>

### Discussion

Under Guideline F for financial considerations,<sup>33</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. 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 a [person's] reliability, trustworthiness, and ability to protect classified information.<sup>34</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.

In analyzing the facts of this case, I considered the following disqualifying and mitigating conditions or factors as most pertinent:

AG ¶ 19(a) inability or unwillingness to satisfy debts;

AG ¶ 19(c) a history of not meeting financial obligations;

AG ¶ 20(b) the conditions that resulted in the financial problems 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 [person] acted responsibly under the circumstances;

AG ¶ 20(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; and

AG ¶ 20(d) the [person] initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

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<sup>31</sup> *Egan*, 484 U.S. at 531.

<sup>32</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

<sup>33</sup> AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

<sup>34</sup> AG ¶ 18.

The evidence supports a conclusion that Applicant has a problematic financial history sufficient to raise a security concern under Guideline F. His financial problems appear to be the result of an over reliance on credit as well as the loss of income due to unemployment and underemployment. His initial efforts to address his indebtedness were undercut by the questionable professional advice and services he received from a law firm. He has now resolved or is in the process of resolving six of the nine delinquent accounts in the SOR. The remaining three delinquent accounts are enrolled in the debt-repayment program. The plan appears to be legitimate because it has already resolved two delinquent accounts. He is adhering to the monthly payments required by the program, and he should be successful in resolving the three remaining delinquent accounts, although doing so will take time.

Considering the totality of circumstances, I am persuaded that Applicant's financial problems are due to circumstances largely beyond his control, and he has acted responsibly under difficult circumstances. I am further persuaded that his financial problems are not due to irresponsibility or lack of concern, although he could have been more proactive once his employment situation stabilized. My overall impression of Applicant is that he is a hard-working, responsible employee who found himself in a difficult situation. Finally, I am persuaded that Applicant will continue to adhere to his debt-repayment program, and that he will, in due course, resolve the three remaining delinquent accounts.

In addition, Applicant receives credit in mitigation because he voluntarily reported the information about his financial problems in his 2012 security clearance application and during the 2012 background investigation. He has also been truthful and complete in responding to questions about his financial problems. His willingness to self-report speaks well for his integrity, his willingness to comply with laws, rules, and regulations, and his overall suitability for access to classified information.

Applicant's history of financial problems no longer creates doubt about his 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*. In doing so, I gave substantial weight to Applicant's 20 years of honorable military service, which is a good indicator of his suitability for access to classified information. Accordingly, I conclude that he met 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:

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| Paragraph 1, Guideline F: | For Applicant |
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| Subparagraphs 1.a—1.i: | For Applicant |
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## **Conclusion**

In light of the record as a whole, it is clearly consistent with the national interest to grant Applicant access to classified information.

Michael H. Leonard  
Administrative Judge