



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



In the matter of: )  
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----- ) ISCR Case No. 15-03813  
 )  
Applicant for Security Clearance )

**Appearances**

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

07/21/2016

**Decision**

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to deny his eligibility for access to classified information. He has a history of financial problems or difficulties due to a business dispute followed by a business failure during the period of 2007–2008. He met his burden to present sufficient evidence to explain and mitigate the financial considerations security concern. 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 December 4, 2012.<sup>1</sup> About three years later on September 26, 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 with a four-page memorandum on November 2, 2015. Subsequently, on January 20, 2016, Department Counsel amended the SOR by adding an unpaid county tax lien as ¶ 1.d. Applicant answered the amended SOR on March 9, 2016.

The case was assigned to me on March 21, 2016. The hearing was held as scheduled on May 25, 2016. Department Counsel submitted Exhibits 1–7, which were admitted. Applicant submitted Exhibits A–E, which were admitted. Applicant testified on his own behalf. The transcript of the hearing (Tr.) was received on June 3, 2016.

The record was kept open until June 27, 2016, to allow Applicant to submit additional documentation. He made a timely submission, and the two additional matters are admitted without objections as Exhibits F and G.

### **Findings of Fact**

Applicant is a 54-year-old program manager for a company engaged in the defense industry.<sup>4</sup> He has a bachelor's degree in a field of engineering. He is married with two children in their early 20s. He has worked for his current employer since 2012. He relocated his family to their state of current residence in 2011, and he had a cross-country commute until 2012. Before that, he was self-employed during 2010–2012 as the president of an audio-video design and integration business. Before that, he was employed during 2008–2010 as a managing director for a similar business. And before that, he was self-employed during 2002–2008 as president and owner of his own company.

Applicant has a history of financial problems or difficulties tied to the period of 2002–2008 when he owned and operated his own company. Under Guideline F, the SOR, as amended, alleges the following matters: (1) a Chapter 7 bankruptcy case ending in discharge in 2011; (2) an unpaid state tax lien for \$2,386 filed in 2012; (3) an unpaid state tax lien for \$8,629 filed in 2008; and (4) an unpaid county tax lien for

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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. 31–35 (describing his work as program manager).

\$4,478 filed in 2011. He presented testimonial and documentary evidence for those matters as described below.

**SOR ¶ 1.a–Chapter 7 bankruptcy case.** The bankruptcy court records show that Applicant received a discharge of his indebtedness in October 2011.<sup>5</sup> His bankruptcy case included (1) \$417,299 in secured claims on Schedule D, (2) \$2,696 in unsecured priority claims on Schedule E, and (3) \$139,166 in unsecured nonpriority claims on Schedule F. It also included real property and personal property valued at a total of about \$380,581, as reflected on Schedules A and B.

Applicant explained that his personal bankruptcy in 2011 followed a sequence of events that began with the founding of his company in 2002.<sup>6</sup> His company provided low-voltage wiring, automation systems, and entertainment systems primarily in new home construction. In 2007, the company ceased doing business when it was sold and merged into another company in the same line of business. The transaction was a stock-purchase agreement. In exchange for stock, the acquiring company assumed the assets and liabilities of Applicant's company. He received company stock (which is now worthless), not cash, and was hired as vice-president with the intention of becoming president in 2008.

The deal unraveled quickly. Applicant explained that the acquiring company misrepresented their financial condition, did not disclose certain liabilities that they had in another deal with a previously acquired company's president, which if known, it likely would have resulted in Applicant not agreeing to the acquisition.

Things came to a head in about April 2008, when the majority shareholder placed a hold on all bank accounts, withdrew most of the money from accounts, and filed a claim to all of the company's assets. Without operating capital, the board of directors (of which Applicant was a member) voted to seek bankruptcy protection for the company, although the majority shareholder voted against it. The majority shareholder then sought to have the bankruptcy petition dismissed with the goal of selling the company's assets and negotiating with selected creditors. During that period, the majority shareholder locked and denied access to facilities, hid assets, and defaulted on final wages. Eventually, the bankruptcy court dismissed the company's petition, and the majority shareholder then liquidated assets to his benefit and defaulted on a number of liabilities. Due to these circumstances, Applicant was faced with liabilities for trade accounts payable, leases, sales taxes, vehicle loans, and other business-related debts.

Applicant was able to find other employment in a similar industry in May 2008, with a business who agreed to help him service his customers. Applicant brought along

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<sup>5</sup> Exhibit 3.

<sup>6</sup> This section of the findings of fact is based on Applicant's answer to the SOR, his hearing testimony, and documentary evidence. He gave a detailed explanation of the circumstances in his answer to the SOR as well as during his background investigation.

many of his customers to the new business, which allowed him to make a living and support his family. Applicant believes the majority shareholder made material if not fraudulent misrepresentations during the acquisition and merger. He consulted several attorneys about bringing a civil action against the majority shareholder, but he concluded the expected cost was too high to run the risk of never collecting on a time-consuming lawsuit. As a result, he resolved his indebtedness in the 2011 Chapter 7 bankruptcy case as noted above.

**SOR ¶ 1.b—state tax lien for \$2,386.** Applicant paid \$6,026 in October 2015 to resolve the lien for tax period 2010 and other tax periods with his state of former residence.<sup>7</sup> Documentation shows the lien was paid, satisfied, and ordered cancelled in November 2015. He explained his delay in addressing the lien was due to a combination of inattention and a concerted effort to bury a negative experience while focusing on getting a fresh start in his state of current residence.<sup>8</sup>

**SOR ¶ 1.c—state tax lien for \$8,629.** This debt stems from sales taxes incurred by Applicant's company during 2002–2005, which became due after an accounting reclassification of certain income. Applicant disputes personal liability for this debt, and he does not intend to pay it as a matter of principle. He disputes the debt because it was a liability assumed by the acquiring company in the 2007 acquisition and merger. Documentation—the agreement and plan of merger with attached schedules—shows that the sales taxes owed from 2002–2005 were listed as a long-term liability of his company.<sup>9</sup> Applicant stated that the state department of revenue has made no attempts to contact him, and if the state elected to pursue collection, he would hire an attorney and challenge it.<sup>10</sup>

**SOR ¶ 1.d—county tax lien for \$4,478.** Applicant believes this lien is a duplicate based on information he received over the telephone from county tax officials.<sup>11</sup> Documentation shows the lien was paid, satisfied, and ordered cancelled in April 2011.<sup>12</sup>

Applicant's current overall financial situation is stable.<sup>13</sup> His annual salary is \$145,000, and he received a \$7,000 bonus this year. He spouse is employed as a public school teacher earning about \$34,000 annually. He has a 401(k) account with his

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<sup>7</sup> Exhibits A–E; Tr. 62, 64–65.

<sup>8</sup> Tr. 57.

<sup>9</sup> Exhibit G.

<sup>10</sup> Tr. 60.

<sup>11</sup> Answer to Amended SOR.

<sup>12</sup> Exhibit F.

<sup>13</sup> Tr. 37–40.

current employer with a balance of about \$55,000, but no other investment accounts due to the previous business failure and bankruptcy.

Applicant was respectful and serious during the hearing, and he conducted himself like a gentleman throughout. His recollection of his financial history was hampered by the passage of time since the 2007–2008 business dispute and business failure as well as his own efforts to put the episode in the past. Overall, I found Applicant’s testimony to be credible and worthy of belief.

### **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.

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>

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<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.

<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.

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.

### 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

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<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.

<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.

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 to satisfy debts.<sup>28</sup> That conclusion is supported by Applicant's admissions to the SOR allegations and the documentary evidence.

In mitigation, I have considered the six mitigating conditions under Guideline F,<sup>29</sup> and the following are most pertinent:

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) [t]here are clear indications that the problem is being resolved or is under control;

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

AG ¶ 20(e) the [person] 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 taken to resolve the issue.

Applicant receives credit under those four mitigating conditions. The evidence shows his financial problems are linked to the 2007–2008 period, when he sold his company, had a dispute with the majority shareholder of the acquiring company, and then the acquiring company failed, saddling him with liabilities. In other words, there is no evidence suggesting that his financial problems were caused by frivolous or irresponsible spending, consistent spending beyond one's means, poor self-control, or other issues of security concern. The worst thing to say about Applicant is that he may have exercised flawed or poor business judgment when he agreed to the acquisition and merger in 2007. He considered suing the majority shareholder for making material misrepresentations and fraud, but he eventually concluded that bankruptcy in 2011 was his best course of action.

Throughout this period, Applicant continued working, as a salaried employee or self-employed, until beginning his current position with a defense contractor in 2012.

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<sup>28</sup> AG ¶¶ 19(a) and (c).

<sup>29</sup> AG ¶ 20(a)–(f).

Together with his spouse, they are now making a substantial income, about \$180,000 annually, which has provided them with a degree of financial stability after their bankruptcy. He resolved two of the tax liens at issue (one in 2011 and another in 2015). He disputes liability for the third lien, he has a reasonable basis for the dispute, and he provided documentation to support the basis for his dispute. Overall, the evidence shows that Applicant's financial problems were caused by the business failure, which was a circumstance largely beyond his control and it is unlikely to recur. He also acted responsibly under difficult circumstances. Applicant impressed me as a serious, responsible, and trustworthy person. Further, I am persuaded that his financial problems or difficulties that were caused by the business failure are not a true and accurate reflection of his current fitness and suitability for access to classified information.

Applicant's history of financial problems or difficulties does not 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>30</sup> 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 as follows:

Paragraph 1, Guideline F:	For Applicant
Subparagraphs 1.a–1.d:	For Applicant

### **Conclusion**

In light of the record as a whole, it is 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).