



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



In the matter of: )  
)  
) ISCR Case No. 15-05797  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Ray T. Blank, Jr., Esq., Department Counsel  
For Applicant: *Pro se*

03/23/2017  
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**Decision**  
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KATAUSKAS, Philip J., Administrative Judge:

Applicant contests the Defense Department's intent to deny or revoke his eligibility for access to classified information. He did not present sufficient evidence to explain, extenuate, or mitigate the security concern stemming from his problematic financial history. 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 24, 2014. This document is commonly known as a security clearance application. About a year and a half later on April 9, 2016, 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

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<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

action under the security guideline known as Guideline F for financial considerations. Applicant answered the SOR on May 3, 2016, and requested a decision based on the written record without a hearing.

On June 1, 2016, Department Counsel submitted all relevant and material information.<sup>2</sup> Included in the relevant and material information were seven items of evidence, which are admitted into evidence as Government Exhibits 1 through 7. The file of relevant material (FORM) was mailed to Applicant, who received it on June 9, 2016. He responded to the FORM on July 13, 2016. His response included three documents, which are marked as Applicant's Exhibits A, B and C, and they are admitted into evidence. The case was assigned to me on March 10, 2017.

### **Procedural Matters**

Department Counsel's FORM includes Exhibit 7, which is a report of investigation (ROI) summarizing Applicant's interview that took place during the March 2015 background investigation. The ROI is not authenticated as required under ¶ E3.1.20 of the Directive.<sup>3</sup> Department Counsel's written brief includes a footnote advising Applicant that the summary was not authenticated and that failure to object may constitute a waiver of the authentication requirement. I have reviewed the complete record and have concluded that the ROI contains evidence that is largely irrelevant to the issues presented in this case. Those parts of the ROI that are relevant present evidence that is needlessly cumulative of evidence already admitted. The ROI is, therefore, inadmissible.<sup>4</sup>

### **Findings of Fact**

Applicant is 60 years old and at the time of his security clearance application he had been employed since June 2014 by a defense contractor. His current clearance sponsor is also a defense contractor.

In his November 2014 security clearance application, Applicant disclosed an educational loan in default in the estimated amount of \$20,000. He stated that he had been "unable to keep up with [the] student loan." He explained that he planned to resolve this default through a student loan consolidation company.<sup>5</sup>

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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>2</sup> The file of relevant material consists of Department Counsel's written brief and supporting documentation, some of which are identified as evidentiary exhibits in this decision.

<sup>3</sup> See generally ISCR Case No. 12-10933 (App. Bd. Jun. 29, 2016) (In a concurring opinion, Judge Ra'anani notes the historical concern about reports of investigation in that they were considered by some to present a heightened problem in providing due process in security clearance cases. Judge Ra'anani raises a number of pertinent questions about using an unauthenticated ROI in a non-hearing case with a pro se applicant.).

<sup>4</sup> See Fed. R. Evid. 401 – 403.

<sup>5</sup> Exhibit 4.

The SOR alleged an educational loan in collection in the amount of \$51,850 and three consumer accounts in collection in the amounts of \$240, \$196 and \$145. Applicant's answer to the SOR admitted the debts and claimed that the three consumer accounts had been paid in full and that he had applied for a payment plan with respect to the defaulted student loan. Applicant's response to the FORM provided documentation showing payment of the \$240 and \$196 debts but did not provide documentation sufficient to show payment of the \$145 debt. Nor did the response show the establishment of or adherence to a payment plan for the educational loan.

### **Law and Policies**

It is well-established law that no one has a right to a security clearance.<sup>6</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>7</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>8</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>9</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>10</sup> The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>11</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>12</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>13</sup>

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<sup>6</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>7</sup> 484 U.S. at 531.

<sup>8</sup> Directive, ¶ 3.2.

<sup>9</sup> Directive, ¶ 3.2.

<sup>10</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>11</sup> Directive, Enclosure 3, ¶ E3.1.14.

<sup>12</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>13</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>14</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>15</sup>

### Discussion

Under Guideline F for financial considerations,<sup>16</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>17</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:

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) [t]here 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>14</sup> *Egan*, 484 U.S. at 531.

<sup>15</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

<sup>16</sup> AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

<sup>17</sup> AG ¶ 18.

The evidence supports a conclusion that Applicant has a problematic financial history sufficient to raise a security concern under Guideline F. It appears that his principal financial problem is based on a delinquent student loan. With that said, I have given very little weight to the three consumer collection accounts, because the amounts are minor, and Applicant's response to the FORM included acceptable documentation that two of those three accounts have been paid, albeit after the issuance of the SOR.<sup>18</sup>

Based on the written record before me, I am unable to credit Applicant in extenuation or mitigation as to the delinquent student loan. That loan's first major delinquency was in June 2013.<sup>19</sup> He has held full-time employment since March 2004.<sup>20</sup> Applicant has had ample time to address the delinquent student loan. In fact, in his November 2014 security clearance application Applicant stated his intention to make payment arrangements.<sup>21</sup> Instead, he waited until after the issuance of the SOR to apply for a payment plan, and there is no evidence that a payment plan is in place. A security clearance adjudication is not a proceeding aimed at collecting an applicant's debts. Rather, it is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness.<sup>22</sup>

The record demonstrates Applicant's inability or unwillingness to satisfy debts and a history of not meeting financial obligations. The record does not indicate that Applicant's financial problems were due to conditions largely beyond his control or that the problem is being resolved, is under control or that Applicant made good-faith efforts to repay overdue creditors.

The record creates doubt about Applicant's 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*. Accordingly, I conclude that Applicant 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:

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<sup>18</sup> Applicant's response to the FORM provided a document prepared by Applicant purporting to show that the collection action for a mobile phone account was paid in full. That document, however, was not a business record of the collection agency or the original creditor showing payment. It is, therefore, not acceptable proof of payment.

<sup>19</sup> Exhibit 6.

<sup>20</sup> Exhibit 4.

<sup>21</sup> Exhibit 4.

<sup>22</sup> ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008).

Paragraph 1, Guideline F:	Against Applicant
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant

### **Conclusion**

In light of the record as a whole, it is not clearly consistent with the national interest to grant Applicant access to classified information.

Philip J. Katauskas  
Administrative Judge