



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



In the matter of: )  
 )  
 ----- ) ISCR Case No. 15-08566  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Andrew H. Henderson, Esq., Department Counsel  
For Applicant: *Pro se*

09/20/2017  
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**Decision**  
\_\_\_\_\_

KATAUSKAS, Philip J., Administrative Judge:

Applicant contests the Defense Department's intent to revoke his eligibility for access to classified information. Applicant mitigated the security concern raised by 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 June 25, 2015. This document is commonly known as a security clearance application. On August 20, 2016, after reviewing the application and the information gathered during a background investigation, the Department of Defense Consolidated Adjudications Facility sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant his eligibility for access to classified information.<sup>1</sup> It detailed the factual reasons for

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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 addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG),

the action under the security guideline known as Guideline F for financial considerations. Applicant answered the SOR on September 23, 2016, and requested a decision based on the written record without a hearing.

On October 27, 2016, Department Counsel submitted a file of relevant material (FORM).<sup>2</sup> The FORM was mailed to Applicant on the same date. He was given 30 days to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. Applicant received the FORM on November 4, 2016.<sup>3</sup> Applicant responded to the FORM on December 5, 2016. The documents submitted by Applicant in response are marked as Applicant's Exhibit A (AE) and are admitted into evidence without objection.<sup>4</sup> The case was assigned to me on August 8, 2017.

### **Procedural Matters**

Included in the FORM were six items of evidence, which are marked as Government Exhibits (GE) 1 through 5.<sup>5</sup> Exhibits 1 and 3 through 5 are admitted into evidence without objection. GE 2 is a report of investigation (ROI) summarizing Applicant's interview that took place during the November 2015 background investigation. The ROI is not authenticated, as required under ¶ E3.1.20 of the Directive.<sup>6</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. The footnote is prominently prefaced with a bolded, upper-case notice to Applicant and flagging for Applicant the importance of the footnote, which then explains the concepts of authentication and waiver. In a case such as this, where Applicant has responded to the FORM, it is fair to conclude that Applicant read the footnote, understood it, and chose not to object to GE 2. GE 2 is, therefore, admitted into evidence.

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effective within the Defense Department on June 8, 2017, apply here. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2016). In this case, the SOR was issued under Adjudicative Guidelines effective within the Defense Department on September 1, 2006. My Decision and Formal Findings under the revised Guideline F would not be different under the 2006 Guideline F.

<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> The Defense Office of Hearings and Appeals' (DOHA) transmittal letter is dated October 27, 2016, and Applicant's receipt is dated November 4, 2016. The DOHA transmittal letter informed Applicant that he had 30 days after receiving it to submit information.

<sup>4</sup> AE is comprised of a cover letter and 14 sets of tabbed documents, which I will refer to as AE, Tab # \_\_\_\_.

<sup>5</sup> The first item in the FORM is the SOR and Applicant's Answer. Because the SOR and the Answer are the pleadings in this case, they are not marked as Exhibits. Items 2 through 6 are marked as Exhibits 1 through 5.

<sup>6</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.).

## Findings of Fact

Applicant is 56 years old and holds two Associate's degrees. He has never married and has no children. He served in the U.S. Air Force on active duty from March 1986 until being honorably discharged in November 1999. Since June 2015 he has been employed as a business analyst for a defense contractor.<sup>7</sup>

The SOR alleged eight delinquent debts totaling \$26,311 and a Chapter 7 bankruptcy filing in June 2002 that was discharged in September 2002. Applicant admits all of the SOR allegations with explanations. He explained that in October 2012 he was laid off by his employer when the federal government contract he was supporting ended, and his employer did not have another position available for Applicant. He managed to get by financially for about six months using unemployment compensation and his savings. He then had to borrow from his family to pay his household bills. Next, he moved to a state where the cost of living was much lower. He cashed out his retirement account to make ends meet. In July 2015 he was rehired by the company that laid him off in 2012, where he works today.<sup>8</sup>

In his answer to the SOR, Applicant provided documentation showing that he has resolved, either by payments or by payment agreements, five of the SOR debts.<sup>9</sup> In his response to the FORM, Applicant provided documentation that he has resolved, either by payments or payment agreements, the other three SOR debts.<sup>10</sup>

## Law and Policies

It is well-established law that no one has a right to a security clearance.<sup>11</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>12</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.

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<sup>7</sup> GE 1.

<sup>8</sup> Answer, p. 1.

<sup>9</sup> Answer, pp. 2-3 and pp. c.1 through 1.h.3. Those SOR debts are ¶¶ 1.c, e through h.

<sup>10</sup> AE, cover letter page 7 and Tabs #12-14. Those SOR debts are ¶¶ 1.a, b, and d.

<sup>11</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>12</sup> 484 U.S. at 531

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>13</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>14</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>15</sup> The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>16</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>17</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>18</sup>

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.<sup>19</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>20</sup>

### **Discussion**

Under Guideline F for financial considerations,<sup>21</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 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 or sensitive information.<sup>22</sup>

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<sup>13</sup> Directive, ¶ 3.2.

<sup>14</sup> Directive, ¶ 3.2.

<sup>15</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>16</sup> Directive, Enclosure 3, ¶ E3.1.14.

<sup>17</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>18</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>19</sup> *Egan*, 484 U.S. at 531.

<sup>20</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

<sup>21</sup> AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

<sup>22</sup> AG ¶ 18.

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:

AG ¶ 19(a) inability to satisfy debts;

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

AG ¶ 20(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 20(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

The evidence supports a conclusion that Applicant has had a problematic financial history going back to 2012. This raises security concerns under AG ¶¶ 19(a) and (c). The next inquiry is whether any mitigating conditions apply.

In October 2012, Applicant was laid off when the government contract he was supporting ended, and his employer did not have another position available for Applicant. Applicant used unemployment compensation, savings, cashing out his retirement fund, and loans from his family to survive financially, until he was rehired by his former employer. During his lengthy period of unemployment, Applicant even relocated to another state where the cost of living was lower. I find that Applicant's job loss was a circumstance beyond his control. I also find that in facing his adverse circumstances, Applicant acted responsibly during his period of unemployment and subsequent to his rehiring by initiating good-faith efforts to pay his overdue creditors. AG ¶¶ 20(b) and (d) apply.<sup>23</sup>

The record does not raise doubts about Applicant's reliability, trustworthiness, good judgment, and ability to protect classified information. In reaching this conclusion, I

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<sup>23</sup> Applicant's Chapter 7 bankruptcy filed 15 years ago does not raise a security concern. AG ¶ 20(a) applies.

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>24</sup> Accordingly, I conclude that Applicant 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**

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the SOR allegations:

Paragraph 1, Guideline F: For Applicant

Subparagraphs 1.a-1.i: For Applicant

### **Conclusion**

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

Philip J. Katauskas  
Administrative Judge

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<sup>24</sup> AG ¶¶ 2(d)(1)-(9) and 2(f)(1)-(6).