



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



In the matter of: )  
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----- ) ISCR Case No. 14-06806  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Bryan Olmos, Esq., Department Counsel  
For Applicant: Jacob T. Ranish, Esq.

07/13/2016  
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**Decision**  
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LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to revoke his eligibility for access to classified information. He had financial problems due to a business downturn that led to failure of the business. He then had a period of uneven employment, unemployment, and underemployment. 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 March 7, 2014.<sup>1</sup> On August 28, 2015, after reviewing the application and information gathered during a background investigation, the Department

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<sup>1</sup> Exhibit 1 (commonly known as a security clearance application).

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 on September 28, 2015.

The case was assigned to me on March 2, 2016. The hearing was held as scheduled on April 13, 2016. Government Exhibits 1, 3, 4, and 5 were admitted without objections. Exhibit 2 was not admitted per Applicant's objection. Applicant Exhibits A–U (there is no Exhibit H) were admitted without objections. Testimony was taken from Applicant and one witness. The transcript of the hearing (Tr.) was received on April 25, 2016.

### **Findings of Fact**

Applicant, now age 54, is a U.S. military war hero.<sup>4</sup> He was decorated for heroism on multiple occasions, and his actions saved the lives of servicemembers on the battlefield on more than one occasion. His letters of recommendation from distinguished and high-ranking military officers are quite impressive. He is a graduate of a U.S. military academy. He is married, but separated, with three children, ages 12, 13, and 17, who live with him. He served 20 years of honorable military service primarily as a fighter pilot, instructor pilot, and a fighter weapons officer. He was required to hold a security clearance during his military service, and, at times, was exposed to highly sensitive information.<sup>5</sup>

Applicant retired from military service in 2006, and he then worked as a chief pilot for a private aviation company for about six months.<sup>6</sup> He described the job as pleasant enough with great pay, but he was away from his family too much. He concluded he was in the wrong job, and he decided he would find a way to earn a living and be a father to his young children at the same time.

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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> Exhibits L–R; Tr. 24–35, 40–58.

<sup>5</sup> Tr. 58–60.

<sup>6</sup> Tr. 61–62.

Applicant then fell into a business opportunity.<sup>7</sup> During the next two years or so, December 2006 to March 2009, he was president and chief executive officer of a company that did business as a wholesale distributor of recreational vehicles. He grew the business from starting in the back of a garage to a 32,000 foot warehouse and having 30 dealers by the summer of 2007.<sup>8</sup> At its peak, the company had 17 employees, five trucks, seven trailers, a bookkeeper, and a sales manager.<sup>9</sup> The next year, 2008, sales revenue fell dramatically due to the then ongoing financial crisis, and he was unable to meet his overhead expenses with such low revenue.<sup>10</sup>

Not a quitter by nature, Applicant took various steps to keep the business afloat, but he eventually closed the business in early 2009.<sup>11</sup> The steps included liquidating a retirement account, shrinking the inventory of vehicles, using credit card accounts to finance business expenses, having his wife return to work as a waitress, and obtaining a second mortgage loan on his personal residence. In addition, he was working with an investor or financial backer as well, but by January 2009 it was clear that promises of additional funds would not materialize.<sup>12</sup> Applicant's investor or financial backer, his wife's mother's half-brother, ended up in federal prison for fraud not connected to Applicant's company.<sup>13</sup>

Applicant described the business failure as "a big punch in the stomach."<sup>14</sup> By February 2009, he estimates that he had invested close to \$500,000 in the business.<sup>15</sup> In addition to the business failure, he was past due on mortgage loan payments for his personal residence, it was now worth less than what he owed, and the rental homes he had bought during his military career were in financial distress.<sup>16</sup>

After the business failure, Applicant began looking for employment "to support [his] family and get out of this hole that [he] dug for [himself]."<sup>17</sup> From April 2009 to

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<sup>7</sup> Tr. 63.

<sup>8</sup> Tr. 64.

<sup>9</sup> Tr. 66–67.

<sup>10</sup> Tr. 67.

<sup>11</sup> Tr. 67–72.

<sup>12</sup> Tr. 67–69.

<sup>13</sup> Tr. 71–72.

<sup>14</sup> Tr. 70.

<sup>15</sup> Tr. 72.

<sup>16</sup> Tr. 72–73.

<sup>17</sup> Tr. 74.

October 2011, he worked for a transport company, initially as a consultant for \$1,000 weekly and eventually as a full-time general manager.<sup>18</sup> He was successful in those positions and intended to remain employed there until he had to step aside when the owner of the business replaced Applicant with a family member.<sup>19</sup> During this period of employment, Applicant was trying to catch up with the rental homes that he had not sold and had not gone into foreclosure. He was still living in his personal residence and trying to catch up on those mortgage loan payments. He was also trying to catch up on some credit card accounts. In addition, the financial problems caused Applicant and his wife to separate in about May 2011, which created an additional financial burden to support two households.<sup>20</sup>

Applicant then went through a period of unemployment and underemployment from October 2011 to November 2013.<sup>21</sup> He was unemployed from October 2011 to January 2012; he worked as a self-employed (commission only) insurance agent from January 2012 to March 2013, which was unsuccessful; and he worked as a management trainee and sales manager for a furniture rental business earning \$10.50 hourly working 50 hours weekly from March 2013 to November 2013. He described this period as a “humble pill,” but he knew he had to earn a living and could not sit around and wait for a big-paying job to appear.<sup>22</sup>

Applicant had a little good luck when someone passed along his resume to a defense contractor who needed a fighter pilot subject-matter expert.<sup>23</sup> He worked for that company, initially as a consultant and then an employee, from about December 2013 to October 2014, when he was laid off after the company lost the contract. He was earning about \$150,000 annually before the job layoff. He then applied for and was hired for a similar job, which would have required him to live and work in Iraq.<sup>24</sup> He had concerns about the risks and dangers involved in the job, but was nonetheless willing to take the job to support his family and address his financial obligations. Instead, he began his current job with a defense contractor in April 2015.<sup>25</sup>

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<sup>18</sup> Tr. 74–75.

<sup>19</sup> Tr. 75–76.

<sup>20</sup> Tr. 77–78.

<sup>21</sup> Exhibit 1; Tr. 76–81.

<sup>22</sup> Tr. 81.

<sup>23</sup> Tr. 82–83.

<sup>24</sup> Tr. 83–84.

<sup>25</sup> Tr. 85.

Applicant believes his current job as an fighter-pilot instructor and subject-matter expert is stable because he is a valued employee.<sup>26</sup> His current site manager describes him as “a superstar” who has proven himself to be invaluable as an instructor.<sup>27</sup> The site manager further stated that Applicant disclosed his financial situation when applying for the job, and also stated that Applicant wanted to pay his debts off over time and not shirk his debts.

Applicant’s current annual salary is about \$170,000.<sup>28</sup> According to a personal financial statement, he has a monthly gross income of about \$18,000, or \$216,000 annually, which includes his military retired pay.<sup>29</sup> His net monthly income is about \$14,616. He has assets (including marital property) of about \$192,000 consisting of \$135,000 in real estate (he managed to keep one of the rental homes), \$5,000 in bank savings, \$12,000 in investments, and \$40,000 in various personal assets. He has liabilities of about \$234,000 on which he makes a total monthly payment of about \$2,521. After other monthly expenses, he estimates a positive monthly remainder of about \$6,550.

Applicant resumed making efforts to address his financial obligations during 2013–2014, when he obtained the job with the defense contractor.<sup>30</sup> Those efforts continued into 2015 when he retained legal counsel in an effort to address the largest debt stemming from the second mortgage loan on his personal residence.<sup>31</sup> Many people encouraged him to seek relief in bankruptcy court, but he rejected it as an easy way out and he refused to do it.<sup>32</sup> He considers the last eight years a “big learning experience” and now realizes he was a fighter pilot trying to be a businessman and was out of his element; he got in over his head; he trusted people he should not have trusted; and he made naive business decisions.<sup>33</sup>

Under Guideline F, the SOR alleges that Applicant has nine delinquent financial accounts for a total of about \$231,000. He presented testimonial and documentary evidence for those accounts as described below.

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<sup>26</sup> Tr. 84–85.

<sup>27</sup> Exhibit S.

<sup>28</sup> Tr. 85.

<sup>29</sup> Exhibit J; Tr. 85.

<sup>30</sup> Tr. 85–87.

<sup>31</sup> Answer to SOR, Enclosures at 10–33.

<sup>32</sup> Tr. 87–88.

<sup>33</sup> Tr. 88.

**SOR ¶ 1.a–collection account for \$8,477.** This debt stems from a credit card account.<sup>34</sup> Applicant entered into a repayment arrangement and has made \$100 monthly payments since September 2015. The account balance is not reflected in the documentation.

**SOR ¶ 1.b–collection account for \$11,770.** This debt stems from a credit card account.<sup>35</sup> Applicant entered into a repayment arrangement and has made \$151 monthly payments since September 2015. The account has a balance of \$10,713 as of April 4, 2016.

**SOR ¶ 1.c–collection account for \$2,308.** This debt stems from a lease for business equipment.<sup>36</sup> Applicant settled this debt for \$1,500 in February 2016 and the account now has a zero balance.

**SOR ¶ 1.d–collection account for \$6,855.** This debt stems from a credit card account.<sup>37</sup> Applicant entered into a repayment arrangement and has made \$75 monthly payments since September 2015. The account has a balance of \$6,404 as of March 16, 2016.

**SOR ¶ 1.e–collection account for \$121,846.** This debt stems from the second mortgage loan Applicant obtained on his personal residence.<sup>38</sup> It is also the debt that Applicant attempted to resolve through previous negotiations. In March 2016, he along with his wife (it's a joint debt), agreed with the creditor to settle the debt for \$138,252 via a confession of judgment, which required a \$25,000 lump-sum payment and consecutive monthly payments of at least \$1,000 each month. Applicant made the lump-sum payment on March 18, and the first \$1,000 monthly payment was scheduled for April 30, 2016.

**SOR ¶ 1.f–collection account for \$4,903.** This debt stems from a credit card account.<sup>39</sup> Applicant entered into a repayment arrangement and has made \$153 monthly payments since September 2015. The account has a balance of \$3,983 as of March 29, 2016.

**SOR ¶¶ 1.g and 1.h–past-due accounts for \$25,256 and \$28,256 with the same mortgage lender.** These debts stem from mortgage loans Applicant had on

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<sup>34</sup> Tr. 89–90; Exhibit A.

<sup>35</sup> Tr. 90; Exhibit B.

<sup>36</sup> Tr. 90–91; Exhibit C.

<sup>37</sup> Tr. 91; Exhibit D.

<sup>38</sup> Tr. 91–93; Exhibit E.

<sup>39</sup> Tr. 93; Exhibit F.

rental homes, which he refinanced in an effort to keep his business afloat.<sup>40</sup> The homes were foreclosed upon and he was not aware of the accounts until receiving the SOR. He received no correspondence from the creditor, but he attempted to contact the creditor and learned it was no longer in business. He contacted the possible successor companies and was told that there was no debt in his name. The April 2014 credit report lists both past-due accounts as closed accounts; foreclosure redeemed; and credit grantor reclaim collateral.<sup>41</sup> Neither account appears on the more recent November 2015 account.<sup>42</sup> Given these circumstances, I find the past-due accounts were resolved when the rental homes were foreclosed upon.

**SOR ¶ 1.i–collection account for \$20,518.** This debt stems from a vehicle loan Applicant obtained to provide transportation for his sales manager.<sup>43</sup> The loan went into default and the vehicle was repossessed when the business failed. He believed the repossession resolved the account and learned there was a deficiency balance for a lesser amount after receiving the SOR. He entered into a repayment arrangement and has made \$125 monthly payments since February 2016. The account has a balance of \$12,923 as of April 4, 2016.

In addition to taking the above steps, Applicant completed an online course on financial recovery and money management in April 2016.<sup>44</sup> He intends to continue paying his delinquent accounts because it's the right thing to do, he's not a quitter, and he has no intention to shirk or duck his financial obligations.<sup>45</sup>

Applicant was respectful, polite, and serious throughout the hearing. Although he has an impressive military record, he did not display any sign of arrogance, indignation, or entitlement, and I found him to be understated and humble. Overall, I found Applicant's hearing testimony to be credible and worthy of belief.

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<sup>40</sup> Tr. 93–97; Exhibit G.

<sup>41</sup> Exhibit 4.

<sup>42</sup> Exhibit 5.

<sup>43</sup> Tr. 97–98.

<sup>44</sup> Exhibit K.

<sup>45</sup> Tr. 98–99.

## Law and Policies

It is well-established law that no one has a right to a security clearance.<sup>46</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>47</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>48</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>49</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>50</sup> The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>51</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>52</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>53</sup>

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>54</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>55</sup>

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<sup>46</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>47</sup> 484 U.S. at 531.

<sup>48</sup> Directive, ¶ 3.2.

<sup>49</sup> Directive, ¶ 3.2.

<sup>50</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>51</sup> Directive, Enclosure 3, ¶ E3.1.14.

<sup>52</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>53</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>54</sup> *Egan*, 484 U.S. at 531.

<sup>55</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).



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>56</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>57</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>58</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>59</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 to satisfy debts.<sup>60</sup> That conclusion is supported by Applicant's admissions to the SOR allegations, his testimony, and the

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<sup>56</sup> Executive Order 10865, § 7.

<sup>57</sup> AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

<sup>58</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>59</sup> AG ¶ 18.

<sup>60</sup> AG ¶¶ 19(a) and (c).

documentary evidence. He incurred a large amount of delinquent debt due to his failed business, and he struggled to repay his creditors.

In mitigation, I have considered the six mitigating conditions under Guideline F,<sup>61</sup> and the following are most pertinent:

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 [person's] current reliability, trustworthiness, or good judgment;

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.

Applicant receives credit under the four mitigating conditions mentioned above. The evidence shows his financial problems date back to the 2008–2009 period, when his business experienced a downturn due to a dramatic decline in sales revenue associated with the 2008 financial crisis. Applicant attempted to hunker down and get through it by taking various steps, but eventually the business failed in early 2009.

Thereafter, he went through a period of uneven employment, and then a period of unemployment and underemployment from October 2011 to November 2013. Things started to turn around in late 2013 when he obtained a six-figure salary working for a defense contractor. But that job was short lived and ended in about October 2014, when he was laid off due to no fault of his own. He did make efforts to address his delinquent debts when he was working with a decent income. Since beginning his current employment in April 2015, he has made a concerted, honest effort to address his delinquent debts. Moreover, he believes he now has stable employment, and he has sufficient income to meet his expenses and service his delinquent debts.

Applicant also receives credit for not simply choosing to rely on a legal remedy, such as bankruptcy or a statute of limitations, to resolve his delinquent debts. It is not mere conjecture or speculation to say that many people in Applicant's situation in 2008–2009 would have exercised their legal right to obtain relief from the indebtedness in bankruptcy court. Instead, Applicant has insisted on honoring his debts, and he presented substantial documentation showing his efforts to date.

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<sup>61</sup> AG ¶ 20(a)–(f).

Applicant also receives substantial credit for his 20 years of honorable military service and his impressive service in wartime. He was cited four times for individual acts of heroism while participating in aerial flight.<sup>62</sup> His persistence coupled with his actions saved the lives of fellow servicemembers more than once. The letters of recommendation from distinguished and high-ranking military officers attest to his exemplary character and his reputation for integrity and trustworthiness. As found in the findings of fact, he is a genuine U.S. military war hero. Equally impressive, in my view, was his humble demeanor.

Applicant is still facing a large amount of delinquent debt, but I am persuaded by the evidence that he will adhere to the payment arrangements and repay his creditors. He has already made measurable progress. Making further progress and eventually paying off those debts will take time. He has earned the opportunity—by his selfless and heroic service to our Nation—to be afforded the time necessary to resolve delinquent debts that were incurred due to a business failure largely beyond his control. Applicant did not present a perfect case in mitigation, but he did present sufficient evidence to explain and mitigate the financial considerations security concern. In short, I have no doubts or concerns, none whatsoever, about Applicant's 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>63</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.i:	For Applicant

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<sup>62</sup> Exhibits L and M.

<sup>63</sup> AG ¶ 2(a)(1)–(9).

## **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