



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



In the matter of: )  
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----- ) ISCR Case No. 17-03633  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Christopher Morin, Esq., Department Counsel  
For Applicant: *Pro se*

08/29/2018

**Decision**

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for access to classified information. He did not present sufficient evidence to explain, extenuate, or mitigate the security concern stemming from his history of financial problems or difficulties. 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 March 29, 2016.<sup>1</sup> This document is commonly known as a security clearance application. Thereafter, on October 31, 2017, 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

<sup>1</sup> Exhibit 3.

information. The SOR is similar to a complaint. It detailed the factual reasons for the action under the security guideline known as Guideline F for financial considerations.

Applicant answered the SOR on November 15, 2017. His answers were mixed; he denied the allegations in SOR ¶¶ 1.g and 1.m; and he admitted the remaining allegations. He requested a decision based on the written record in lieu of a hearing.

On February 12, 2018, Department Counsel submitted all relevant and material information that could be adduced at a hearing. The file of relevant material (FORM) consists of Department Counsel's written brief and supporting documentation, some of which are identified as evidentiary exhibits in this decision. The FORM was mailed to Applicant, who received it on March 20, 2018. He did not reply within 30 days of receipt of the FORM. The case was assigned to me on August 28, 2018.

### **Findings of Fact**

Applicant is a 45-year-old employee who requires a security clearance for his job as a network technician for a federal contractor. He has been so employed since July 2015. He was awarded a high school diploma in 1991. He married in May 1996, and he and his wife have lived separately since September 1996. He has lived with a cohabitant since 2003. He has three children, born in 1996, 1998, and 2000. According to his security clearance application, he has been continuously employed since at least 2005. This includes two periods of self-employment, the first during 2005-2009, and the second during 2009-2012. His employment history does not include military service. This is his first time applying for a security clearance.

The SOR alleges a history of financial problems or difficulties consisting of the 13 delinquent accounts ranging in amounts from \$55 to \$6,196 for a total of about \$17,700. The 13 delinquent accounts stem from collection and charged-off accounts. They include two collection accounts for child support and two collection accounts for student loans. The \$1,425 collection account in SOR ¶ 1.b was reduced to judgment in February 2016.<sup>2</sup> Department Counsel concedes that the child-support account in SOR ¶ 1.g is paid.<sup>3</sup> The 12 remaining delinquent accounts are established by (1) Applicant's admissions in his answer to the SOR and (2) credit reports from June 2016 and September 2017.<sup>4</sup>

Applicant did not submit any supporting documentation with his answer to the SOR. Nor did he take advantage of the opportunity to reply to the FORM by submitting documentation in extenuation, mitigation, or explanation, as appropriate, in support of his case. Given these circumstances, there is no documentation to establish that the

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<sup>2</sup> Exhibit 7.

<sup>3</sup> Department Counsel's Brief at 2.

<sup>4</sup> Exhibits 5 and 6.

remaining 12 delinquent accounts were paid, settled or compromised, in a payment arrangement, disputed, cancelled, forgiven, or resolved by some other means.

### Law and Policies

This case is adjudicated under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective June 8, 2017.<sup>5</sup>

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. In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.<sup>8</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>9</sup>

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>10</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>11</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>12</sup> The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>13</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate

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<sup>5</sup> The 2017 AG are available at <http://ogc.osd.mil/doha>.

<sup>6</sup> *Department of the 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>7</sup> 484 U.S. at 531.

<sup>8</sup> 484 U.S. at 531.

<sup>9</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

<sup>10</sup> Directive, ¶ 3.2.

<sup>11</sup> Directive, ¶ 3.2.

<sup>12</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>13</sup> Directive, Enclosure 3, ¶ E3.1.14.

facts that have been admitted or proven.<sup>14</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>15</sup>

### Discussion

Under Guideline F for financial considerations, 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 an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. . .<sup>16</sup>

The concern is broader than the possibility that a person might knowingly compromise classified or sensitive 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(b) unwillingness to satisfy debts regardless of the ability to do so;

AG ¶ 19(c) a history of not meeting financial obligations; 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 a problematic financial history sufficient to raise a security concern under Guideline F. There is no reliable documentary evidence that Applicant has made forward progress in resolving the remaining 12 delinquent accounts that altogether total more than \$16,000 in delinquent debt. His problematic financial history suggests he may be irresponsible, unconcerned, or negligent in handling and safeguarding classified or sensitive information.

What is missing here is documentation in support of Applicant's case. There is no documentation to establish that he initiated and is adhering to a good-faith effort to pay

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<sup>14</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>15</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>16</sup> AG ¶ 18.

his other delinquent debts. He has not met his burden of production because he did not present sufficient documentation showing that he is making some sort of effort to resolve his delinquent debts.

Applicant's history of financial problems or difficulties 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*. I also considered the whole-person concept. Accordingly, I conclude that he 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:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a – 1.f:	Against Applicant
Subparagraphs 1.g:	For Applicant
Subparagraphs 1.h – 1.m:	Against Applicant

### **Conclusion**

It is not clearly consistent with the national interest to grant Applicant access to classified information. Eligibility denied.

Michael H. Leonard  
Administrative Judge