



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 18-01343

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel  
For Applicant: Ryan C. Nerney, Esq.

08/20/2019

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**Decision**

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LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for access to classified information. The evidence is sufficient to mitigate his history of financial problems. Accordingly, this case is decided for Applicant.

**Statement of the Case**

Applicant completed and submitted a Standard Form (SF) 86, Questionnaire for National Security Positions, the official form used for personnel security investigations, on February 2, 2017. (Exhibit 1) This document is commonly known as a security clearance application. Thereafter, on June 8, 2018, 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. 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, with assistance of counsel, answered the SOR on July 15, 2018. Of the seven delinquent financial accounts alleged in the SOR, he admitted three, and he admitted in part and denied in part four. He also provided a lengthy explanation of his circumstances, and he enclosed proposed exhibits A-N. He requested a hearing before an administrative judge.

The case was assigned to me on September 24, 2018. The hearing took place on December 4, 2018. Applicant appeared with counsel. Department Counsel offered documentary exhibits, which were admitted as Exhibits 1-6. Applicant offered documentary exhibits, which were admitted as Exhibits A-S. Other than Applicant, no witnesses were called. The hearing transcript (Tr.) was received on December 12, 2018.

The record was kept open for approximately 30 days, until January 4, 2019, to provide Applicant an opportunity to submit additional documentation in support of his case. (Tr. 24, 56-57) Applicant made a timely submission, by e-mail, and those four documents are admitted without objections as Exhibits T-W.

### **Findings of Fact**

Applicant is a 38-year-old employee who is seeking to obtain a security clearance. He works as a military jet aircraft mechanic and crew chief. He is responsible for scheduled maintenance, unscheduled maintenance, pilot safety, and security. (Tr. 18) He has had this job with a company in the defense industry since January 2017. His formal education includes a high school diploma, completion of military technical school, and a certificate as a medical assistant awarded in July 2016. Applicant's background includes honorable service in the U.S. Air Force from November 2003 to about January 2015, for about 11 years in total. (Exhibit E) His primary specialty in the Air Force was tactical aircraft maintenance. He obtained and held a security clearance while on active duty.

Applicant is twice married. His first marriage ended in divorce in June 2014, when he was serving in the Air Force. (Exhibit W) The couple separated in 2010. (Tr. 19) He has three children from the marriage, ages 17, 14, and 11. Applicant shares custody of the minor children with his former spouse as follows: one week with Applicant, two weeks with the mother, then alternating throughout the year. Applicant and the mother have joint legal decision making concerning the children. Applicant married his current spouse in 2014. He has three adult stepchildren from the marriage, none of whom reside in his household. His mother-in-law, age 68, lives in Applicant's household, and she contributes financially as she is able (e.g., buying grocery items). Applicant paid child support during the separation. The court ordered Applicant to pay \$586 monthly in child support and \$600 monthly in spousal maintenance for 36 months. (Exhibit W) The court-ordered amounts were based on Applicant's then military pay and benefits.

Applicant has had inconsistent employment since his departure from military service in January 2015. As a trained and experienced aircraft mechanic, he had a job

lined up to work in that field, but the job fell through a few weeks before his discharge. (Tr. 61) As a result, he accepted a job as a forklift operator for \$9 per hour. (Tr. 21) He had that job from February 2015 to September 2015. He next worked as a laborer until December 2015. He was an unemployed full-time student from December 2015 to July 2016, when he completed the medical assistant certificate. He worked as a medical assistant from July 2016 to January 2017, when he began his current job working in aircraft maintenance. He now earns nearly \$33 per hour, and he estimated his gross income for 2018 at about \$64,000. (Tr. 65; Exhibit H) His spouse is a manager for a grocery store, and he estimated her gross income for 2018 at about \$27,000.

Applicant has largely admitted the delinquent financial accounts alleged in the SOR, and those allegations are also established by the documentary evidence. (Exhibits 2-6) In particular, the SOR concerns seven delinquent accounts, in collection, charged off, or past due. The most serious are the past-due child or family support accounts indebted to a state department of economic security in amounts of \$17,089 and \$10,089. The remaining five delinquent accounts, in collection or charged off, range in amounts from \$246 to \$4,564 for a total of about \$9,546.

Applicant attributed his history of financial problems to loss of income when he left military service in January 2015 and his inconsistent employment over the next two years. He characterized the change in income as “drastic.” (Tr. 20-21) He could not afford his child-support and spousal-maintenance obligations along with his rent and monthly living expenses. (Tr. 19-22) As a result, he went into arrears on his court-ordered payments. He explained that he was always making payments, but not the full amount, perhaps \$200 or \$300 monthly. The situation changed in about January 2017, when he began his current employment in the defense industry.

Applicant is no longer required to pay \$600 monthly in spousal maintenance, as that terminated after 36 months (June 2017). Although he remains in arrears for both accounts, since combined into one, he has made regular payments for the last two years (2017 and 2018). He is now paying \$586 for child support and about \$136 extra for arrears; pay stubs from December 2017 and June 2018 show a deduction of about \$361, which totals \$722 monthly. (Exhibit H)

The current balance on the account with the state department of economic security was \$16,367, as of November 23, 2018. (Exhibit V) The balance was \$17,484, as of July 3, 2018, which consisted of a child-support arrearage of \$3,064 and a spousal-maintenance arrearage of \$14,209. (Exhibit K at 1) Records also establish that from February 21, 2016, to July 5, 2018, he paid a total of \$24,349, with \$10,550 toward arrears and \$13,799 toward the current obligation. (Exhibit K) A payment of \$7,937 was made on March 7, 2016, which was an income-tax refund intercepted by the IRS. It was applied toward arrears.

Turning next to the consumer debts, the \$4,546 collection account in SOR ¶ 1.c stems from an apartment lease Applicant co-signed for his first wife when they were married but separated. (Tr. 23-27, 49-51) He was unaware of this debt until receipt of the SOR; he did not recall it during the background investigation. (Exhibit 2) His then

wife was evicted from the apartment due to nonpayment of rent; the court ordered the eviction in February 2013, although neither Applicant nor his wife were present in court; the court entered a judgment in the sum of \$2,385, plus a \$230 late fee and \$70 in court costs. (Exhibit Q) Applicant entered into a payment arrangement with the current creditor for \$50 monthly, and he made the first monthly payment on December 12, 2018. (Exhibit U at 2)

The \$2,864 charged-off account in SOR ¶ 1.d stems from an unsecured personal loan Applicant obtained from a lender that serves the military community. (Tr. 27-31, 51-54) He defaulted on the loan due to inability to pay, making his last payment in December 2014, which was after his divorce was final and shortly before his discharge. (Tr. 54) The account is now in collection with a law firm; the current balance was \$5,882, as of November 30, 2018; and Applicant agreed to a payment arrangement of \$250 monthly. (Exhibit T) He made the first monthly payment on December 7, 2018. (Exhibit U at 2)

The \$101 collection account in SOR ¶ 1.e stems from an account with an electric utility. Applicant paid this account in full in January 2018. (Exhibit L)

The \$1,771 collection account in SOR ¶ 1.f stems from an apartment Applicant had leased. (Tr. 31-32) He moved out of the apartment thinking the security deposit would cover any remaining expenses. The account was reduced to judgment in the amount of \$1,403, plus interest, and then collected via a writ of garnishment beginning in May 2017. (Exhibit J) The judgment was satisfied through the garnishment as of February 2018. (Exhibit 6 at 1)

The \$246 collection account in SOR ¶ 1.g stems from a telecommunications account. Applicant settled this account for the lesser amount of about \$197 in August 2017. (Exhibit I)

Applicant recently qualified to obtain a mortgage loan to buy a home for about \$183,000. (Tr. 35, 54-57; Exhibit 6 at 1-2) He bought the home in October 2017, and then refinanced the loan to a lower interest rate with a different lender in May 2018. He had some difficulty in qualifying for the loan, but was able to do so once he produced paperwork showing he had been paying child support. (Tr. 57) The loan is a \$0 down payment mortgage issued by a private lender, and guaranteed by the U.S. Department of Veterans Affairs. The most recent credit report from November 2018 shows that both loans have been paid as agreed. (Exhibit 6 at 1-2)

In addition to the home purchase, Applicant obtained financial counseling from a consumer credit counseling organization in August 2018. (Exhibit N) The counseling appears to have been comprehensive, as it resulted in a 31-page report for Applicant's review and use. Personal financial statements also establish that Applicant's household budget has a positive monthly net remainder. (Exhibits M and N)

## 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.

It is well-established law that no one has a right to a security clearance.<sup>1</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>2</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>3</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>4</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>5</sup> Under the Directive, the parties have the following burdens: (1) Department Counsel has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted; (2) an applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven; and (3) an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>6</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 set forth in AG ¶ 18 as follows:

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<sup>1</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>2</sup> 484 U.S. at 531.

<sup>3</sup> 484 U.S. at 531.

<sup>4</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

<sup>5</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>6</sup> Directive, Enclosure 3, ¶¶ E3.1.14 and E3.1.15.

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. . . .

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 or sensitive information.

In analyzing the facts of this case, I considered the following disqualifying and mitigating conditions as most pertinent:

AG ¶ 19(a) inability to satisfy debts;

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

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 a history of financial problems that is sufficient to raise a security concern under Guideline F. The disqualifying conditions noted above apply to this case.

Turning to the matters in mitigation, Applicant's financial problems are due to a combination of factors; namely, his divorce and the resulting support obligations, his decline in income upon leaving military service, and his inconsistent employment for the two years prior to his current job. Those circumstances were largely beyond his control. He acted reasonably under the circumstances by taking jobs below his qualifications and paying whatever he could afford. He made a major improvement to his situation by obtaining his current job, which has good pay and benefits. Given the circumstances, the mitigating condition at AG ¶ 20(b) applies in Applicant's favor.

Applicant has initiated a good-faith effort to resolve his indebtedness. He receives substantial credit for addressing the highest priority debt in the SOR, which is his ongoing child-support obligation, and he is making progress on the arrears too. He also receives credit for resolving the two minor collection accounts and the \$1,771 collection account. The latter was resolved after it was reduced to judgment and

collected via garnishment, which is not considered voluntary or in good faith under AG ¶ 20(d), although some people prefer the garnishment process because it works. He also receives credit for making payment arrangements for the two largest consumer accounts, the \$4,564 collection account and the \$2,864 charged-off account in SOR ¶¶ 1.c and 1.d. His efforts in that regard were quite recent, which suggests he was slow to act once he returned to better-paying employment in 2017. And there is no track record of payments for those two accounts, and so it is premature to conclude that he is adhering to a good-faith effort to repay those particular debts. Given the circumstances, the mitigating condition at AG ¶ 20(d) does not fully apply in Applicant's favor, but he is entitled to partial credit for the reasons discussed above.

Applicant did not present a perfect case in mitigation, but, as in all human affairs, perfection is not the standard. A security clearance case is not a debt-collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all the delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Here, I am persuaded that Applicant is making an honest effort to be financially responsible and repay his creditors. There are clear indications that he is repaying his creditors, and his financial problems appear to be under control. So long as he continues in his present job, which has good pay and benefits, it is most probable that he will continue to make the court-ordered support payments and adhere to the payment arrangements for the debts in SOR ¶¶ 1.c and 1.d. The financial considerations concern is mitigated.

Following *Egan* and the clearly consistent standard, I have no doubts about Applicant's reliability, trustworthiness, good judgment, and ability to protect classified or sensitive 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. 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:

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|---------------------------|---------------|
| Paragraph 1, Guideline F: | For Applicant |
| Subparagraphs 1.a-1.g:    | For Applicant |

## **Conclusion**

It is clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility granted.

Michael H. Leonard  
Administrative Judge