



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



In the matter of:)	
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)	ISCR Case No. 14-05403
Applicant for Security Clearance)	

Appearances

For Government: Gregg Cervi, Esq., Department Counsel
For Applicant: *Pro se*

06/25/2015

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to revoke a security clearance to work in the defense industry. He has a history of financial problems or difficulties consisting of eight delinquent accounts for a total of more than \$50,000. He has made a good-faith effort to address his financial problems by resolving seven of the eight accounts, and it is most probable that the eighth account will be resolved within the next year. 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 April 8, 2014.¹ After reviewing the application and

 ¹ Exhibit 1 (this document is commonly known as a security clearance application).

information gathered during a background investigation, the DOD,² on December 3, 2014, 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.³ 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 December 29, 2014, and requested a hearing.

The case was assigned to me on February 25, 2015. The hearing was held as scheduled on March 25, 2015. Department Counsel offered Exhibits 1 and 2, and they were admitted. Applicant offered Exhibits A, B, C, E, F, H, I, J, and K, and they were admitted. The hearing transcript (Tr.) was received on April 1, 2015.

The record was kept open until April 15, 2015, to provide Applicant an opportunity to submit additional documentation. Those matters (to include his explanatory e-mail) were timely submitted and they are admitted, without objections, as Exhibits A-1, B-1, B-2, C-1, G, H-1, L, and M.

Findings of Fact

Applicant is a 43-year-old systems engineer for a federal contractor. He is seeking to retain a security clearance previously granted to him. He has worked for his current employer, a major defense contractor, since 2004. His work involves the integration of software and hardware in a laboratory environment. His annual salary is about \$100,000.

Applicant's employment history includes serving on active duty in the U.S. military from November 1989 to June 1995. Upon his honorable discharge from military service, he elected to pursue higher education by attending a local community college. He earned an associate's degree in 1999, and then enrolled in a state university. He earned a bachelor's degree in electrical engineering in December 2002, but he had difficulty finding employment as an engineer. He kept his job at the university, which he started in January 2002, and continued working as an electronics technician until early 2004, when he began his current job. He has a good record of employment based on performance evaluations from 2013 and 2014.⁴

² 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.

³ 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). The AG replace the guidelines in Enclosure 2 to the Directive.

⁴ Exhibits I and J.

Applicant married in 2010. As a result, he has two stepchildren, ages 16 and 14. His wife is a full-time student who is pursuing a doctoral degree in chemistry.⁵ She is using student loans to pay for school expenses, and she earns an income working as a teaching assistant at the university.

The SOR alleged eight delinquent accounts for a total of more than \$50,000, which Applicant does not dispute. He attributed the delinquent accounts to putting himself through school without a good understanding of the student loan system, which led him to pay for much of his school and living expenses by using credit cards.⁶ He also points to the 2002 period, when he had difficulty finding a job as an engineer due to fallout from the dot-com bubble and stock market crash of 2000–2002.⁷ His marriage in 2010 and new family with two teenage children also slowed his efforts.⁸

Applicant met with a bankruptcy attorney in 2009, who advised him to maximize his contribution to his 401(k) account because that money would be protected in a bankruptcy case.⁹ He paid the first half of the fee to retain the attorney, but then decided not to pursue bankruptcy. Instead, he continued maximizing his contribution to the 401(k) account with the idea to use those funds to settle the debts via lump-sum payments as opposed to installment repayment agreements.

Applicant submitted documentary evidence that he has resolved seven of the eight accounts.¹⁰ The status of each account is summarized in the following table.

Account	Status
SOR ¶ 1.a—\$7,150 judgment filed in 2011.	Settled for \$4,000 in March 2015. (Exhibits A and A–1)
SOR ¶ 1.b—\$4,234 collection account.	Settled for \$1,270 in March 2015. (Exhibits B, B–1, and B–2)
SOR ¶ 1.c—\$18,745 collection account.	Settled for \$11,500 in March 2015. (Exhibits C and C–1)
SOR ¶ 1.d—\$5,167 collection account.	Unresolved.

⁵ Tr. 41–43.

⁶ Tr. 32, 57–58.

⁷ Tr. 29.

⁸ Tr. 32–33.

⁹ Tr. 49–50.

¹⁰ Exhibit K.

SOR ¶ 1.e—\$144 medical collection account.	Paid in March 2015. (Exhibit E)
SOR ¶ 1.f—\$81 medical collection account.	Paid in March 2015. (Exhibit F)
SOR ¶ 1.g—\$1,075 past-due student loan with balance of \$9,218.	Current with balance of \$6,324 as of April 2015. (Exhibit G)
SOR ¶ 1.h—\$11,128 collection account.	Settled for \$6,579 in March 2015. (Exhibits H and H–1)

In brief, Applicant resolved seven of the eight delinquent accounts by (1) paying in full the two minor medical collection accounts, (2) bringing the past-due student loan current, and (3) settling four accounts for a total of \$23,349. He was able to do so by withdrawing about \$25,000 from his 401(k) account.¹¹

Applicant is waiting to address the unresolved collection account until later in the year or the first quarter of next year. He is waiting because he expects to receive an income tax bill (based on the early withdrawal from the 401(k) account as well as Form 1099s due to the settlements for lesser amounts), and so he wants to reserve sufficient funds to pay taxes.¹²

Law and Policies

It is well-established law that no one has a right to a security clearance.¹³ 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.”¹⁴ 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.¹⁵ An

¹¹ Exhibit M; Answer to SOR.

¹² Exhibit L.

¹³ *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 (10th Cir. 2002) (no right to a security clearance).

¹⁴ 484 U.S. at 531.

¹⁵ Directive, ¶ 3.2.

unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹⁶

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁷ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁸ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁹ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²⁰

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.²¹ The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.²²

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.²³ Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

¹⁶ Directive, ¶ 3.2.

¹⁷ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁸ Directive, Enclosure 3, ¶ E3.1.14.

¹⁹ Directive, Enclosure 3, ¶ E3.1.15.

²⁰ Directive, Enclosure 3, ¶ E3.1.15.

²¹ *Egan*, 484 U.S. at 531.

²² ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

²³ Executive Order 10865, § 7.

Discussion

Under Guideline F for financial considerations,²⁴ 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.²⁵ 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.²⁶

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. Taken together, the evidence indicates inability or unwillingness to satisfy debts²⁷ and a history of not meeting financial obligations²⁸ within the meaning of Guideline F.

In mitigation, I have considered six mitigating conditions under Guideline F,²⁹ and I have especially considered the following as most pertinent:

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 death, divorce, or separation), and the [person] acted responsibly under the circumstances;

²⁴ AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

²⁵ 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).

²⁶ AG ¶ 18.

²⁷ AG ¶ 19(a).

²⁸ AG ¶ 19(c).

²⁹ AG ¶ 20(a)–(f).

AG ¶ 20(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved and is under control; and

AG ¶ 20(d) the [person] initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's history of financial problems or difficulties goes back several years, to at least 2009, when he considered bankruptcy as a means to address his indebtedness. Five of the eight delinquent accounts stem from unsecured credit card accounts that he used to finance his education and living expenses when he was a student. He allowed those matters to remain unresolved while he accumulated money in his 401(k) account to address it via lump-sum payments. He should have acted with more diligence and haste in resolving the delinquent accounts, but his marriage in 2010 and instant family consisting of two teenagers was a factor in delaying his efforts.

Nevertheless, he has now resolved seven of the eight delinquent accounts in the SOR, and he has a reasonable plan to resolve the eighth in the foreseeable future. He did so at some financial detriment to himself, because making an early withdrawal from a 401(k) account is subject to current income taxes in addition to a 10% penalty, and is contrary to the central principles of long-term investing. Doing so also shows that Applicant is acting in good faith.

Of course, the purpose of this case is not aimed at collecting debts.³⁰ Rather, the purpose is to evaluate an applicant's judgment, reliability, and trustworthiness consistent with the guidelines in the Directive. In evaluating Guideline F cases, the Appeal Board has established the following standard:

The Board has previously noted that the concept of a meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payments of such debts one at a time. Likewise, there is no requirement

³⁰ ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.³¹

Here, the evidence clearly supports a conclusion that Applicant has established a plan to resolve his financial problems and taken significant actions to implement that plan. He has established a meaningful track record of actual debt reduction by resolving seven of the eight delinquent accounts in the SOR, and he has a reasonable plan to resolve the eighth within the next year. Those actions, along with his explanations concerning how he incurred the indebtedness and why he delayed in resolving it, are sufficient to mitigate the concern.

Applicant met his burden to present sufficient evidence to explain and mitigate the financial considerations security concern. I have no doubts about his reliability, trustworthiness, and good judgment. 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.³² Accordingly, I conclude that he has 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.h:	For Applicant

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. Eligibility is granted.

Michael H. Leonard
Administrative Judge

³¹ ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotations omitted).

³² AG ¶ 2(a)(1)–(9).