



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



In the matter of:	)	
	)	
	)	ISCR Case No. 15-00394
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Robert J. Kilmartin, Esq., Department Counsel  
For Applicant: *Pro se*

04/05/2016

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**Decision**

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CERVI, Gregg A., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant completed a Questionnaire for National Security Positions (SF 86) on June 11, 2012. On September 5, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant answered the SOR on September 25, 2015, provided documentation with his Answer, and elected to have the case decided on the written record in lieu of a hearing. The Government's written brief with supporting documents, known as the File

of Relevant Material (FORM), was submitted by Department Counsel on January 7, 2016.

A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on January 19, 2016. He submitted a response to the FORM (AE A), dated February 4, 2016, and provided documentary evidence from the Internal Revenue Service (IRS) as attachments (AE B and AE C). He did not object to any of the Government's exhibits and Department Counsel did not object to Applicant's exhibits.

The case was assigned to me on March 17, 2016. The Government's exhibits included in the FORM (Items 1 to 5) and Applicant's exhibits (AE A to AE C), are admitted into evidence.

### **Findings of Fact**

The SOR alleged a Chapter 7 bankruptcy in 2004 (SOR ¶ 1.a), a small delinquent medical debt totaling \$218 (SOR ¶ 1.b), and a federal tax lien totaling approximately \$14,602 (SOR ¶ 1.c). Applicant admitted the bankruptcy and IRS lien, but denied the medical debt because he is unable to locate the creditor.<sup>1</sup> The evidence submitted with the FORM substantiates the SOR allegations.<sup>2</sup>

Applicant is 56 years old and is employed by a government contractor as a draftsman since 1989. He was born in Cuba, but became a naturalized United States citizen in 1978. He is a high school graduate, did not serve in the military, and is seeking his first security clearance. He has been married since 1981 and has two adult children.<sup>3</sup>

Applicant has a history of financial problems to include federal and state tax delinquencies, but in all cases, he made substantial efforts to satisfy the debts, typically through the use of installment repayment plans. He attributes his financial difficulties to periods of financial overextension where his income was insufficient to meet his financial obligations, and periods of increased tax obligations because of unplanned overtime work, without sufficient tax withholding deducted from his pay.

In 2004, Applicant was overextended on credit card debt to the point where he was unable to manage his debts. He and his spouse sought advice of counsel, and eventually filed Chapter 7 bankruptcy.<sup>4</sup> The bankruptcy was discharged in 2004.

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<sup>1</sup> Item 1. Applicant's credit bureau reports list a medical debt for \$218, but do not show to whom the debt is owed. Applicant is willing to address this debt but is unaware of the medical creditor.

<sup>2</sup> Items 2-5.

<sup>3</sup> Item 2.

<sup>4</sup> Items 1 and 3. Bankruptcy courts typically require financial counseling as a precondition to filing.

In 2006, Applicant and his wife were able to purchase a home with a modest adjustable rate mortgage. In the years following, Applicant's property value plummeted due to the national financial crisis and housing market collapse. He attempted to sell the property but was unsuccessful. On several occasions, he tried to manage his adjustable rate mortgage increases by applying for mortgage loan modifications from his primary lender and other lending institutions, but the primary lender refused to cooperate. Eventually the mortgagee foreclosed in 2009 and the property was sold for a third of the Applicant's purchase price. The mortgage has since been charged off, there is no known deficiency owed, and the foreclosure no longer appears on Applicant's credit bureau report (CBR). The foreclosure was not alleged in the SOR.

In approximately 2007, the IRS filed a lien against the Applicant for unpaid taxes for tax years 2003-2005, totaling approximately \$14,602, including interest and penalties. In 2011, Applicant began regular payments toward this debt under an IRS installment agreement. In December 2015, Applicant applied an inheritance toward his federal tax debt to pay it in full. The IRS lien was released at that time.<sup>5</sup> This tax lien and the small medical debt are the only delinquent debts alleged in the SOR.

Applicant's most recent CBR shows that he is current on all financial obligations.<sup>6</sup> He provided two positive letters of recommendation and support from his supervisors.<sup>7</sup>

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

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<sup>5</sup> AE A-AE C.

<sup>6</sup> Item 1. Applicant provided a summary CBR dated September 15, 2015. There are no delinquencies listed.

<sup>7</sup> Item 1.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable security clearance decision.<sup>8</sup> In *Department of Navy v. Egan*<sup>9</sup>, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>10</sup>

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” It is well-established law that no one has a right to a security clearance. As noted by the Supreme Court in *Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.” 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.<sup>11</sup>

The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## Analysis

### Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

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

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<sup>8</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan.27, 1995).

<sup>9</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>10</sup> *Egan*, 484 U.S. at 531.

<sup>11</sup> *Egan*, 484 U.S. at 531.

questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and,
- (c) a history of not meeting financial obligations.

Applicant has a history of financial delinquencies and unpaid debts, including tax obligations. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (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;
- (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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant has been employed full-time since 1989. He attributes his financial difficulties to periods of financial overextension where his income was insufficient to meet his financial obligations, and periods of increased tax obligations because of unplanned overtime work without sufficient tax withholding deducted from his pay. He has a history of financial problems, but has made good-faith efforts to address them, including paying tax debts through repayment plans, and by resorting to legal means, as a last resort, to address consumer debts. He presumably took mandatory financial counseling classes as a prerequisite to filing bankruptcy in 2004.

After his bankruptcy and foreclosure were behind him, Applicant began to recover from his financial problems, and in 2011, began to address his tax

delinquencies in earnest. Since that time, he paid his state and federal tax debts, cleared the liens, and remains up to date on tax and credit obligations. He is willing to pay the small medical account listed in his CBR and alleged as SOR ¶ 1.b, but is unable to locate a creditor and does not know how the debt arose. His most recent CBR shows that he is current on all financial obligations, and has established a track record of responsible use of credit and timely payment of his financial obligations.

There is sufficient evidence to determine that Applicant's financial obligations have been resolved. Although Applicant has had periods of significant financial problems resulting in the need for major efforts to resolve them, I am persuaded that he acted responsibly under the circumstances to take action to address his debts when financially able, and he made good-faith efforts to completely resolve his tax delinquencies. Along with repaying his tax debts, he established a record of responsible anticipation of tax liabilities and reasonable use of credit. Over the past four or more years, he has established a record of financial responsibility, including decreasing his debt-to-income ratio, and paying his tax and other financial obligations on time. He stated that he and his wife are committed to living a modest lifestyle and his current financial status is stable. I am convinced that he will continue his efforts to stay financially solvent and will address his future financial obligations in a responsible manner. Financial concerns are mitigated under AG ¶¶ 20(a), 20(c), 20(d), and 20(e).

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress;
- and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of “‘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. See Directive ¶ E2.2(a) (‘Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.’) 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 payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.<sup>12</sup>

I considered all of the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guideline F in this whole-person analysis. I have also considered Applicant’s stable work history and positive employment references.

Overall, the record evidence leaves me without questions or doubts as to Applicant’s eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations security concerns.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: For Applicant.

Subparagraphs 1.a – 1.c: For Applicant.

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<sup>12</sup> ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Gregg A. Cervi  
Administrative Judge