



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



In the matter of:)
)
-----) ISCR Case No. 15-02156
)
Applicant for Security Clearance)

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: *Pro se*

03/31/2016

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to deny him eligibility for access to classified information. Applicant did not present sufficient evidence to rebut, explain, extenuate, or mitigate the facts proven by the written record concerning his history of financial problems. 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 October 26, 2012.¹ About three years later on September 30, 2015, after reviewing the application and information gathered during a background investigation, the Department of Defense (DOD)² sent Applicant a statement of reasons

¹ Exhibit 4 (this document is commonly known as a security clearance application).

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.

(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. Applicant answered the SOR on November 3, 2015, with a two-page memorandum.

Neither Applicant nor Department Counsel requested a hearing, and so the case will be decided on the written record.⁴ On December 29, 2015, Department Counsel submitted all relevant and material information that could be adduced at a hearing.⁵ This file of relevant material (FORM) was mailed to Applicant, who received it on January 15, 2016. He did not reply within the 30-day period from receipt of the FORM. The case was assigned to me on March 29, 2016.

Procedural Matters

The FORM includes Exhibit 5, which is a report of investigation (ROI) summarizing Applicant's interview that took place during the December 2012 background investigation. The summary, Exhibit 5, is not authenticated by a witness as required under ¶ E3.1.20 of the Directive. Department Counsel's written brief includes a footnote advising Applicant that the summary was not authenticated and that failure to object may constitute a waiver of the authentication requirement. Nevertheless, a *pro se* applicant's failure to respond to the FORM does not equate to a waiver of the authentication requirement.⁶ The written record does not demonstrate that Applicant understood the legal concepts of authentication, waiver, and admissibility. It also does not establish that he understood the implications of waiving an objection to the admissibility of the summary. Accordingly, except as otherwise stated below, Exhibit 5 is inadmissible and I have not considered it.

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 Directive, Enclosure 3, ¶ E3.1.7.

⁵ The file of relevant material consists of Department Counsel's written brief and supporting documents, some of which are identified as evidentiary exhibits in this decision.

⁶ See *Black's Law Dictionary*, 1717 (Bryan A. Garner ed., 9th ed., West 2009), for a definition of waiver.

Findings of Fact

Applicant is a 54-year-old employee who is seeking to retain a security clearance for his job as a system engineer.⁷ He has been so employed since 2004. Before that, he worked as a senior field engineer for another federal contractor from 1990 to 2004. In other words, he has been continuously employed for the last 25 years. His employment history includes honorable service (reserve duty) with the U.S. Army during 1980–1990. He has been married and divorced three times; his most recent divorce was in 2012; and he has four children, born between 1997 and 2009. His educational background includes some college during 2003.

Applicant disclosed a history of financial problems in his October 2012 security clearance application.⁸ In response to Section 26 of the application, he reported a failure to file federal income tax returns for tax years 2007, 2008, and 2009, due to a delay associated with his spouse's business, which was tied to their joint return. He stated that the returns were filed in 2010. He also reported six other delinquent accounts.

Under Guideline F, the SOR alleges a history of financial problems consisting of the following matters: (1) seven collection accounts for a total of approximately \$49,722; (2) two charged-off accounts for a total of approximately \$17,543; (3) ten medical collection accounts for a total of \$1,149; (4) a past-due real estate mortgage loan in the amount of \$4,606 with a balance of \$227,976; (5) a past-due (120 days or more) credit card account in the amount of \$2,568 with a balance of \$13,184; (6) an unpaid state tax lien entered in June 2010 for \$1,650; and (7) an unpaid judgment entered in April 2009 for \$30,556. Applicant admitted some of these matters in his answer to the SOR. Further, these matters are established by credit reports, which were obtained during the security clearance process in 2012 and 2015.⁹

The written record also establishes that Applicant satisfied the \$30,556 judgment in SOR ¶ 1.m in 2010. In his answer to the SOR, Applicant stated that the judgment stemmed from a business debt incurred by his former spouse, it was a default judgment obtained against both of them, and he paid it in full in 2010. In addition, the background investigation shows the judgment was satisfied, by wage garnishment, in August 2010.¹⁰ Otherwise, Applicant has not provided documentation showing that the remaining delinquent accounts in the SOR are paid, settled, subject to a repayment agreement, in dispute, cancelled, forgiven, or otherwise resolved. His various claims and assertions in his answer to the SOR are not supported by documentation. Indeed, other than the two-

⁷ Exhibit 4.

⁸ Exhibit 4.

⁹ Exhibits 6 and 7.

¹⁰ Exhibit 5 at 8. I considered Exhibit 5 for the limited purpose of showing satisfaction of the judgment, which was not part of the summarized interview of Applicant.

page memorandum in response to the SOR, Applicant did not provide documentation in reply to the SOR or the FORM.

Law and Policies

It is well-established law that no one has a right to a security clearance.¹¹ 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.”¹² 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.¹³ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹⁴

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁵ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁶ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁷ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁸ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹⁹ The DOHA Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.²⁰

¹¹ *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).

¹² 484 U.S. at 531.

¹³ Directive, ¶ 3.2.

¹⁴ Directive, ¶ 3.2.

¹⁵ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁶ Directive, Enclosure 3, ¶ E3.1.14.

¹⁷ Directive, Enclosure 3, ¶ E3.1.15.

¹⁸ Directive, Enclosure 3, ¶ E3.1.15.

¹⁹ *Egan*, 484 U.S. at 531.

²⁰ 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.²¹ 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,²² 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.²³ 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.²⁴

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 problematic financial history within the meaning of Guideline F.²⁵ I reach that conclusion based on the findings of fact that show, other than the judgment, Applicant has done very little to

²¹ Executive Order 10865, § 7.

²² AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

²³ 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).

²⁴ AG ¶ 18.

²⁵ AG ¶ 19(a) and (c).

address his financial problems, which date back to at least 2012 when he completed the security clearance application. With that said, I have little concern about the ten medical collection accounts for a total of \$1,149. (SOR ¶¶ 1.e–1.k, 1.q, 1.r, and 1.v) First, it is presumed that these debts were incurred for necessary medical expenses as opposed to frivolous or irresponsible spending. Likewise, the medical collection accounts do not suggest poor self-control or lack of judgment. Second, the amounts are minor, ranging from \$50 to \$214, which is indicative of co-payments and the like in medical billing.

In mitigation, I have considered the six mitigating conditions under Guideline F,²⁶ and conclude that Applicant has not presented sufficient information to rebut, explain, extenuate, or mitigate the facts proven by the written record. He receives some credit for taking care of the judgment in 2010, but the credit is limited because the judgment was paid by wage garnishment, which is not truly voluntary. The totality of the written record does not show that Applicant has a reasonable plan to resolve the delinquent debts and has demonstrated a firm commitment to adhering to that plan. The facts do not support application of AG ¶ 20(c), the problem is being resolved or is under control, or AG ¶ 20(d), making a good-faith effort to repay.

The concern over Applicant's problematic financial history creates 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.²⁷ 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 his 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.d:	Against Applicant
Subparagraphs 1.e–k:	For Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	For Applicant
Subparagraphs 1.n–1.p:	Against Applicant
Subparagraphs 1.q–1.r:	For Applicant
Subparagraphs 1.s–1.u:	Against Applicant
Subparagraph 1.v:	For Applicant
Subparagraph 1.w:	Against Applicant

²⁶ AG ¶ 20(a)–(f).

²⁷ AG ¶ 2(a)(1)–(9).

Conclusion

In light of the record as a whole, it is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information.

Michael H. Leonard
Administrative Judge