



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



In the matter of:)
)
-----) ISCR Case No. 17-01044
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

07/23/2019

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for access to classified information. The evidence is not sufficient to mitigate his history of financial problems, which is ongoing. He has not taken any substantial affirmative action to resolve more than \$50,000 in delinquent debt. Accordingly, this case is decided against 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 March 31, 2016. (Exhibit 1) This document is commonly known as a security clearance application. Thereafter, on June 26, 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 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 July 21, 2017. He provided handwritten responses on the SOR. His answers to the SOR allegations were mixed, with admissions and denials. He also requested a hearing before an administrative judge.

The case was assigned to another judge on September 19, 2017. The hearing scheduled for September 28, 2017, was cancelled. The case was reassigned to me on May 22, 2018. The hearing took place as scheduled on September 19, 2018. Applicant appeared without counsel. Department Counsel offered documentary exhibits, which were admitted as Exhibits 1-8. Applicant did not offer any documentary exhibits, he called no witnesses, and he relied on his own testimony. The hearing transcript (Tr.) was received on September 27, 2018.

Findings of Fact

Applicant is a 56-year-old employee who is seeking to obtain a security clearance. He is employed as a custodian for a company in the defense industry. He has been so employed since 2016. He was initially hired at an hourly rate of \$11.00, and he now earns \$13.67 per hour. His formal education consists of a high school diploma and a certificate in automotive repair or maintenance from a technical institute awarded in 1984. He married in 2013, and he has no children. His spouse works as an administrative assistant for a community college. Applicant is unaware of her income; they handle their money separately; and they share living expenses.

Before his current employment, Applicant worked full-time as a carpet technician for a casino during 2014-2016. Before that, he worked full-time as a security guard for two different companies during 2008-2014. Before that, he worked full-time as a custodian for a federal contractor during 1999-2008. His employment history does not include service in the U.S. armed forces.

The SOR concerns a history of financial problems consisting of about \$5,000 in back taxes owed to the IRS for multiple tax years and 22 delinquent accounts totaling more than \$50,000. Concerning the delinquent accounts, they include 13 collection accounts, 7 charged-off accounts, and 2 unpaid judgments for a total of about \$56,152. Two of the 13 collection accounts are medical collection accounts for about \$1,687 in total. In addition to his admissions in his answers to the SOR and during the hearing, the delinquent accounts are established by credit reports from 2016, 2017, and 2018. (Exhibits 4, 5, 6, and 7). He explained that he incurred the large amount of indebtedness because he had too many credit cards. (Tr. 37) At the hearing, it was established that the \$453 charged-off account in SOR ¶ 1.t was paid. (Tr. 45-46) Likewise, it was established that the \$154 medical collection account in SOR ¶ 1.x was not supported by the documentary evidence. (Tr. 48) Otherwise, Applicant did not present any reliable documentation to establish that any of other 20 delinquent debts were paid, settled, in a repayment arrangement, in dispute, forgiven, cancelled, or otherwise resolved. I find that those 20 delinquent accounts in the SOR are unresolved.

Concerning the tax matters, Applicant admitted owing back taxes to the IRS for tax years 2013, 2014, and 2015 in amounts of \$2,708, \$1,932, and \$306, respectively. He explained that he incurred the tax debt because he did not have enough tax withheld from his paycheck. (Tr. 31) He has been repaying the IRS in an installment agreement since at least 2016. (Exhibit 3) A November 2016 monthly notice from the IRS showed that he was required to make a \$150 monthly payment and that he owed \$132 for tax year 2011, \$2,708 for 2013, \$1,932 for 2014, and \$360 for 2015. (Exhibit 3) A May 2017 monthly notice from the IRS showed that he was required to make a \$150 monthly payment and that he owed \$2,890 for tax year 2013, \$1,462 for 2014, and \$381 for 2015. (Exhibit 2) He did not present more up-to-date documentation from the IRS at the hearing. He stated he is paying \$180 monthly on the installment agreement, and he estimated owing a total of about \$1,899. (Tr. 31-34) He stated that refunds for tax years 2016 and 2017 were withheld by the IRS for payment of the back taxes. (Tr. 35) He thinks he owes back taxes to the state tax authority, but he did not have much detail on the subject. (Tr. 34)

Applicant has a checking account with a balance of about \$899, but does not have a savings account. (Tr. 50) He had no financial assets other than a 401(k) account with his current employer with a balance of about \$7,000. (Tr. 50-51) He estimated his annual gross income at about \$32,000. (Tr. 37)

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.¹ 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.”² 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.³ The Appeal Board has

¹ *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 (10th Cir. 2002) (no right to a security clearance).

² 484 U.S. at 531.

³ 484 U.S. at 531.

followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.⁴

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.⁵ 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.⁶

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:

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 ¶ 19(f) failure to file or fraudulently filing annual federal, state, or local income tax returns or failure to pay annual federal, state, or local income tax as required;

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

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

⁶ Directive, Enclosure 3, ¶¶ E3.1.14 and E3.1.15.

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

The evidence supports a conclusion that Applicant has a history of financial problems that is sufficient to raise a security concern under Guideline F. His problematic financial history is likely traceable to financial irresponsibility and neglect. He used credit cards to spend more than he could repay, and he did not stay current with his federal tax obligations. The disqualifying conditions noted above apply to this case.

Concerning the remaining delinquent accounts for more than \$50,000, what is missing here is obvious; namely, Applicant failed to take any substantial affirmative action (“a good-faith effort”) to resolve the indebtedness. He owes more in delinquent debt than he earns on an annual basis, and he has little in the way of financial assets. He does not have a realistic plan in place to resolve the indebtedness. It is unlikely that he will repay those debts in the foreseeable future, if ever. Given the level of his assets and liabilities, his best course of action may be to seek relief in bankruptcy court.

It does appear that Applicant has made some progress on the federal income tax matters. There is some documentation from 2016 and 2017 to establish that he has made payments under an installment agreement with the IRS. But again, what is missing here is obvious; namely, current documentation showing his adherence to the agreement. Given the lack of current documentation, I cannot conclude that he is in compliance with the IRS installment agreement.

Following *Egan* and the clearly consistent standard, I have 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 has not 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:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a -- 1.s:	Against Applicant
Subparagraph 1.t:	For Applicant
Subparagraphs 1.u -- 1.w:	Against Applicant
Subparagraph 1.x:	For Applicant
Subparagraph 1.y:	Against Applicant

Conclusion

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

Michael H. Leonard
Administrative Judge