



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



In the matter of:)
)
-----) ISCR Case No. 17-01599
)
Applicant for Security Clearance)

Appearances

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

05/13/2019

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to revoke his eligibility for access to classified information. He provided sufficient evidence to explain and mitigate his history of financial problems, which are now largely resolved. 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 September 6, 2016.¹ This document is commonly known as a security clearance application. Thereafter, on May 25, 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

¹ Exhibit 1.

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 13, 2017. He admitted the four delinquent accounts alleged in the SOR and provided brief explanations for each debt. He also requested an in-person hearing before an administrative judge.

The case was assigned to me on October 13, 2017. The hearing scheduled for January 23, 2018, was postponed due to a government shutdown. The hearing took place as rescheduled on April 18, 2018. Applicant appeared without counsel. Department Counsel offered documentary exhibits, which were admitted as Exhibits 1-4. Applicant made an oral presentation and offered documentary exhibits, which were admitted as Exhibits A-E. No witnesses were called other than Applicant.

The record was kept open until May 18, 2018, to allow Applicant an opportunity to submit additional matters. He made a timely submission on May 7, 2018, and those matters, along with accompanying e-mails, are admitted without objections as Exhibit F.

Findings of Fact

Applicant is a 29-year-old employee who is seeking to retain a security clearance previously granted to him. He is employed as a weapons and communications operator for a company in the defense industry. He has been so employed since 2011, and his place of work is a military proving ground. His formal education includes a bachelor's degree awarded in 2013. He and his wife have three children, ages 10, 6, and 1. His employment history includes honorable service on active duty in the U.S. Marine Corps during 2006-2010, which included a deployment to Iraq. His wife is a military veteran too.

The SOR concerns four delinquent debts consisting of two charged-off accounts owed to the same credit union, a \$1,330 collection account stemming from a credit card account, and a \$91 medical collection account for a total of about \$14,059. He disclosed the debts in his September 2016 security clearance application. He also disclosed a past-due mortgage loan that had been resolved by modification of the loan. He attributed his financial problems to the 2014 timeframe when he and his wife went from four streams of income or paychecks to one. They had four streams of income based on their jobs and both received GI Bill benefits as they were attending school. The reduction in income occurred when he graduated and his wife lost her job and postponed attending school. They quickly found themselves over their heads with the single paycheck from Applicant's job. The status of the four delinquent debts is discussed below.

Charged-off loans for \$8,160 and \$4,478 obtained from same credit union.² The initial loan was made to finance the purchase of the car, and then another personal loan

² Exhibits B – E.

was made, but it was secured by the car too. After defaulting on the loans, Applicant voluntarily returned the vehicle, and the balances owed were charged off. The creditor union then obtained a judgment in the amount of \$13,436 plus \$959 in attorney fees for a total of \$14,395 in November 2016. The judgment was paid and satisfied via a writ of garnishment on both Applicant's and his wife's paychecks, and the writ of garnishment was released in February 2018.

Collection account for \$1,330. This debt stemmed from a credit card account that was opened to finance the purchase of automobile tires. By the time the debt came to Applicant's attention, they were in their period of financial difficulty and unable to pay it. Since then, the balance on the account grew to more than \$2,000, which Applicant resolved by agreeing to pay \$1,450 in May 2018.³

Medical collection account for \$91. Applicant was unaware of the debt until he submitted his 2016 security clearance application. He paid the debt in July 2017.⁴

In addition to the four delinquent accounts in the SOR, an April 2018 credit report shows an unpaid medical collection account for \$2,197. Applicant explained this debt stemmed from an injury he sustained while operating a Bradley Fighting Vehicle at work.⁵ He understands the debt is covered by the state's workers' compensation system and will be resolved in due course.⁶

Applicant earned a gross income of about \$53,000 in 2017.⁷ His wife had recently accepted a full-time teaching position to begin in fall 2018; previously she worked as a teacher's aide.⁸ He described their current financial situation as "much more stable," he has a \$1,000 set aside for an emergency fund, and their joint checking account had a balance of about \$1,500.⁹

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*

³ Exhibit F.

⁴ Exhibit F.

⁵ Tr. 42-46.

⁶ Exhibit F.

⁷ Tr. 37.

⁸ Tr. 37-38.

⁹ Tr. 51-52.

Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position (AG), effective June 8, 2017.¹⁰

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 the 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. In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.¹³ The Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.¹⁴

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 unfavorable clearance 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

¹⁰ The 2017 AG are available at <http://ogc.osd.mil/doha>.

¹¹ *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).

¹² 484 U.S. at 531.

¹³ 484 U.S. at 531.

¹⁴ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

¹⁵ Directive, ¶ 3.2.

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.

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:

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. . .²¹

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 two disqualifying conditions noted above apply to this case.

Concerning the evidence in extenuation and mitigation, Applicant receives credit under both AG ¶¶ 20(b) and 20(d). His financial problems stemmed from a reduction in household income. In particular, his wife's job loss and her decision to postpone attending school (via the GI Bill benefits) were unexpected events that resulted in a reduction of household income. More to the point, Applicant took sufficient action to resolve the four delinquent accounts in the SOR. Perhaps he could have acted sooner,

²¹ AG ¶ 18.

but his ability (cash flow) to do so was no doubt limited by the demands of supporting his spouse and three children. His financial situation is now improved, he has stable employment, and his spouse is transitioning into a full-time job. Taken together, it appears he has done a good job at putting his financial house in order.

Following *Egan* and the clearly consistent standard, I have no doubts or concerns 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 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:	For Applicant
Subparagraphs 1.a -- 1.d:	For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for access to classified information.

Michael H. Leonard
Administrative Judge