



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



In the matter of:)
)
-----) ISCR Case No. 17-02348
)
Applicant for Security Clearance)

Appearances

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

06/06/2019

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to revoke his eligibility for access to classified information. He did not provide sufficient evidence to mitigate his long-standing history of financial problems. 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 November 19, 2015.¹ This document is commonly known as a security clearance application. Thereafter, on July 21, 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 September 5, 2017. His answers were mixed with admissions and denials along with brief explanations. 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 19, 2018. Applicant appeared without counsel. Both Department Counsel and Applicant offered documentary exhibits, which were admitted. Applicant and his spouse were called as witnesses.

Findings of Fact

Applicant is a 56-year-old employee who is seeking to retain a security clearance previously granted to him in 2006. He is employed as a supply technician for a company doing business in the defense industry. His place of employment is a military proving ground. He has been so employed since 2005. He has a high-school education. He has married twice. He married the first time in 1982 and divorced in 2012. He married the second time in 2014. He has two minor stepchildren residing in his household via his current marriage.

The SOR concerns a history of financial problems consisting of the following: (1) a joint Chapter 7 bankruptcy case with his first wife ending in a discharge in 2005; (2) failure to timely file federal and state income tax returns for tax years 2010 through 2014 as well as timely pay taxes for those tax years; and (3) 24 delinquent accounts ranging in amounts from \$52 to \$5,213 for a total of approximately \$18,700.² The 24 delinquent accounts include 7 medical collection accounts for approximately \$3,099. At the hearing, Department Counsel conceded they had no evidence to establish the medical collection accounts in SOR ¶¶ 1.g and 1.i.³ In addition, Department Counsel noted that accounts in SOR ¶¶ 1.f and 1.o are duplicates. Otherwise, the SOR allegations are established by Applicant's admissions and the documentary evidence.

Overall, Applicant attributed his history of financial problems to the circumstances of his first marriage, which included his ignorance of household finances and reliance on his spouse to handle all financial matters.⁴ That situation was further aggravated by his

² Although not alleged in the SOR, Applicant's financial history includes a Chapter 13 bankruptcy case filed in 1992 and dismissed in 1995 during his first marriage. Exhibit 2. Applicant had only a vague recollection of the case. Tr. 56. Given the age of the bankruptcy case along with the few details known about the case, I have given the matter little weight.

³ Tr. 14-18.

⁴ Tr. 38-44.

wife's gambling problem, which was also unknown to him until about the last six months of the marriage.

Applicant was also unaware that his first wife was failing to timely file tax returns and pay taxes due to the federal and state tax authorities. He disclosed the tax matters in his November 2015 security clearance application.⁵ Applicant and his current spouse explained at the hearing that they believe they are now current and in good standing with their state income tax obligations, although they had no supporting documentation from the state tax authority. A review of Applicant's IRS account transcripts (obtained in August 2017) show that the returns were untimely filed and penalties for filing the tax returns after the due date and for late payment of tax were assessed against him.⁶ The transcripts also establish that he owes \$2,815 for tax year 2010, \$6,548 for 2011, \$5,485 for 2012, \$2,549 for 2013, and \$371 for 2014, for a total amount of approximately \$17,768 in back taxes, penalties, and interest. The transcripts further establish Applicant arranged for several installment agreements, the most recent of which was established in November 2016. At the hearing, Applicant and his wife explained that they are current in making \$200 monthly payments per the installment agreement with the IRS. They also estimated the current balance at approximately \$22,000 in back taxes owed to the IRS.⁷

Applicant has used the services of a law firm specializing in disputing information on credit reports, initially after his divorce and then more recently. He presented documentation showing some progress in removal of several disputed debts.⁸ He also presented his divorce decree showing that his first wife was awarded the automobile that is the subject of the \$5,213 charged-off account in SOR ¶ 1.c.⁹ He further presented documentation related to the landlord-tenant dispute that is the subject of the \$3,805 collection account in SOR ¶ 1.d.¹⁰

Dissatisfied with the services of the credit-repair law firm, Applicant and his spouse are retaining a bankruptcy attorney to assist with the tax problems as well as to establish a court-approved payment plan through a Chapter 13 bankruptcy case.¹¹ At the hearing they explained they had paid about half of the retainer fee and anticipated paying the fee in full in June 2018. They understand the firm's services will include a review of several years' worth of tax returns, addressing the back taxes, and representation in the Chapter 13 bankruptcy case.

⁵ Exhibit 1.

⁶ Exhibit 1.

⁷ Tr. 59-60, 79.

⁸ Exhibits E, H, J, K, O, V, and X.

⁹ Exhibit C.

¹⁰ Exhibit D.

¹¹ Tr. 44-49, 80-81.

Applicant is now involved with the household finances. His spouse is in charge, but he has an active role and is no longer ignorant and in the dark. His spouse is managing their finances carefully with the aid of a spreadsheet and what she calls her “little green book.”¹² Applicant is paid hourly and earns about \$38,000 annually.¹³ His spouse is employed as a case manager for a local health-care facility; she is paid hourly and earns about \$38,000. In addition, she receives \$350 monthly in monthly child-support payments, although the payments are irregular.

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.¹⁴ 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.”¹⁵ 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.¹⁶ The Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.¹⁷

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.¹⁸ An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹⁹

¹² Tr. 81-81.

¹³ Tr. 54.

¹⁴ *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).

¹⁵ 484 U.S. at 531.

¹⁶ 484 U.S. at 531.

¹⁷ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

¹⁸ Directive, ¶ 3.2.

¹⁹ Directive, ¶ 3.2.

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.²⁰ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.²¹ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.²² In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²³

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. . . .²⁴

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;

²⁰ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

²¹ Directive, Enclosure 3, ¶ E3.1.14.

²² Directive, Enclosure 3, ¶ E3.1.15.

²³ Directive, Enclosure 3, ¶ E3.1.15.

²⁴ AG ¶ 18.

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

AG ¶ 20(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions taken to resolve the issue; 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. The disqualifying conditions noted above apply to this case.

Concerning the evidence in extenuation and mitigation, Applicant is in a difficult situation, and I certainly have empathy for anyone who relies on a spouse to their detriment. With that said, Applicant was divorced in 2012 and remarried in 2014, and yet the financial hangover from his first marriage continues several years later in 2018. Applicant did not exercise reasonable diligence in addressing his financial problems stemming from his first marriage. He has now wisely retained the services of a bankruptcy attorney. When the record closed, he was still paying the retainer fee and work had not started on the case. Even if I assume the Chapter 13 case was filed in June or July 2018 and the bankruptcy court approved a payment plan some months thereafter, Applicant would now be in the first 12 months of the plan. In my view, it is too soon to tell if Applicant will follow through with the Chapter 13 bankruptcy case and then adhere to the plan's schedule of monthly payments, which are typically over 36 to 60 months. Although I have credited Applicant for circumstances largely beyond his control (the marital difficulties in particular) and he has made progress in fixing his tax problem, the evidence is not sufficient to fully mitigate the security concern stemming from his long-standing history of financial problems.

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.f:	Against Applicant
Subparagraphs 1.g:	For Applicant
Subparagraphs 1.h:	Against Applicant
Subparagraphs 1.i:	For Applicant
Subparagraphs 1.j -- 1.n:	Against Applicant
Subparagraphs 1.o:	For Applicant
Subparagraphs 1.p -- 1.z:	Against Applicant

Conclusion

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

Michael H. Leonard
Administrative Judge